ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672 342
4770 HJUD SB 322 (FILE 2)

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

SECTIONAL ANALYSIS

APRIL 6, 1988

House Judiciary Committee

Section 1. This intent language is meant to give a clear message to the courts that they are not to construe workers' compensation laws in favor of any party but to be fair and to decide cases upon their merit and always within the confines of the written statute. It is also intended that the Board possess the weight of fact-finding authority and that its decision is conclusive unless the court finds that a reasonable person could not have reached the conclusion made by the board.

Further, it is the legislature's intent to address the Alaska Pacific Assurance Co. v. Brown, 687 P.2d 264 (Alaska 1984), decision and constitutionality of the cost of living between claimants receiving benefits in Alaska and living elsewhere.

It is also the Legislature's intent to encourage employers to improve safety practices in the workplace and to use improved safety practices to reduce work related injuries.

Section 2. This section encourages workplace safety by mandating a 10% premium rebate for employers in an assigned risk pool and a 5% premium rebate for employers not in an assigned risk pool if they have a safety program that meets the standards established under the occupational safety code and have had no OSHA violations subject to fines during the period covered by the annual premium.

Section 3. This section creates departmental authority to establish and maintain a board roster of rehabilitation specialists and physicians consistent with the

repeal and reenactment of AS 23.30.041 in section 10 and enactment of AS 23.30.095(k) in section 18.

Section 4. This section mandates the department to adopt new regulations if an existing regulation is held invalid by the supreme court. The intent of this section is to assure that any new regulation adopted under this section have retroactive as well as prospective application so that everyone is treated equally.

Section 5. This section enacts a new provision that denies benefits to an employee who knowingly makes a false statement about his/her physical condition on an employment application or preemployment questionnaire if reliance on the false representation was a substantial factor in the hiring and there was a causal connection between the false representation and the employee's injury. Its purpose is to codify the result in the following board decision and order: Robinett v. Ensearch Alaska Construction, AWCB No. 870210 (September 4, 1987).

Section 6. This section requires that an insurer who extends workers' compensation insurance coverage to an out-of-state employer under another state's coverage policy must provide notice to the Department of Labor. This section addresses the problem of out-of-state employers using out-of-state insurance rates to obtain contracts at lower bid prices than Alaska employers. This will allow the department to investigate employers using other state's coverage policies to assure that all employers doing business in Alaska are paying Alaska premium rates.

Section 7. This section allows an employer to pay an insurance premium on a semi-annual basis if the annual policy is $2,000 or more.

Section 8. This section changes the method and time period the employer must contribute to the second injury fund. Currently, the employer/insurer pays into the fund on the anniversary date of each employee's injury or on termination of each claim, whichever is sooner. This change will allow the employer/insurer to issue one check on all claims annually at the time the annual report is filed under AS 23.30.155(m), instead of issuing hundreds of checks throughout the year. This will not only save time and expense for employers/insurers but save administrative costs as well.

Section 9. This section provides that expenses incurred in the administration of the second injury fund be paid from the fund itself instead of from the general fund of the state. This approach returns to the pre-1981 method of paying the fund's administrative expenses. The financial condition of the fund has improved considerably because of the funding formula enacted in 1981, and the second injury fund can now bear the costs of its administration without jeopardizing the integrity of the fund.

Section 10. This section repeals prior law and reenacts a fundamentally changed workers' compensation rehabilitation system. The most significant changes are these:

1) Under this section the system is no longer mandatory. Thus, an employee who is eligible for

rehabilitation benefits may elect whether or not to receive them. If he/she opts for rehabilitation, the employer is obliged to provide rehabilitation benefits. The purpose of this change is to reduce the use of rehabilitation as a tool for litigation and extorting higher settlements and encouraging the use of rehabilitation services for people most likely to benefit from those persons who truly desire and need them.

2) Under this section an employee who opts for rehabilitation may, in the first instance, select the rehabilitation specialist who will help the employee develop and implement a reemployment plan. The purpose of this change is to encourage employees to cooperate fully in their own rehabilitation and to minimize disputes that result under the present system because employees often distrust specialists chosen by the employer. On the other hand, to prevent selection of unqualified or biased specialists, the administrator may select the specialist from a list of qualified specialists if the employer objects to the employee's selection.

3) This section establishes short but adequate time lines for each step in the rehabilitation process. Although the current law purportedly requires early evaluations, because it also establishes permanent disability, a status normally determined after the healing period, as an eligibility requirement, early rehabilitation referral has been discouraged. The purpose of this change is to encourage early rehabilitation intervention based on the conclusions of all known rehabilitation studies that early

rehabilitation is much more likely to result in return to work than later efforts.

4) This section provides for the following benefits during the evaluation and rehabilitation process: temporary benefits during the healing period, permanent partial disability (PPD) benefits after medical stability, and if PPD benefits end before rehabilitation is completed, a slightly reduced wage. The current system provides for the payment of temporary benefits during the entire process. The purpose of this change is to encourage employee cooperation and rehabilitation success, based on study conclusions that employees who invest in their own rehabilitation are more likely to succeed.

5) This section establishes a two-year maximum for rehabilitation services and a $10,000 maximum for the costs of the plan. Under current law the maximum time for most plans is 37 weeks with provisions for 74 weeks of services in exceptional cases and no dollar maximum for plan costs. The purpose of these changes is to provide more flexible time periods to meet varying needs, and to encourage efficient and realistic use of rehabilitation monies by placing a reasonable limit on them.

The overall goal of these changes is to promote a prompter, more efficient, more cost-effective, successful, and less litigated rehabilitation system.

Section 11. This section adds a provision that preserves the exclusiveness of employer liability under workers' compensation law even if an employee's claim is

barred under AS 23.30.020(b). See comments to section 5.

Section 12. This section increases the penalty for an employer's failure to insure and keep insured its liability for workers' compensation from $1,000 to $10,000 and makes the fine mandatory.

Section 13. This section adds language that clarifies when the employee can seek medical treatment and limits the employee to no more than one change in choice of attending physician without the written consent of the employer. It also requires the employee to give prior notice of the change. Its purpose is to prevent the abuse of frequent physician changes, with its resultant costly overtreatment, by those seeking opinions to support their claims.

Section 14. This section adds language invalidating a course of medical care that requires continuing and multiple treatment unless a written treatment plan is prescribed and submitted to the employer by the attending physician. The section limits initial and continuing treatment unless the attending physician documents the need for excess services in the written treatment plan. Its purpose is to prevent overtreatment, which, by definition, increases costs to employers without enhancing the employee's healing process.

Section 15. This section clarifies that, at reasonable times throughout disability, the employee must submit to an examination by a physician or surgeon of the employer's choice and establishes a presumption of reasonableness. It also limits the employer to no

more than one change in choice of physicians without the written consent of the employee. It is the intent of sections 13 and 15 to afford equal rights to the employee and employer in the selection and change of their respective physicians.

Section 16. This section adds language establishing a medical fee standard, as determined by the board, but not to exceed usual, customary and reasonable fees for the treatment or services in the community in which it is rendered. It also provides that an employee may not be held responsible for the payment of a fee or charge for medical treatment or service.

Section 17. This section is repealed and reenacted authorizing the board to appoint or contract with a medical services review committee to assist and advise on the appropriateness, necessity and cost of medical and related services.

Section 18. This section adds a new provision which grants the board authority to establish a list of physicians and select a physician from the list to conduct an independent medical examination in the event of medical disagreement between the employee's and the employer's physicians. The employer will pay for the examination. It also establishes a presumption that the board's independent medical examiner's opinion is correct and provides the examiner with protection from damages for rendering an opinion or giving testimony.

The original purpose of this section was to resolve medical disagreements quickly and to reduce litigation caused by the need for the board to

resolve disputes resulting from differing medical opinions. However, the House Labor and Commerce amendment to this section requiring that the board's physician be the same specialty as the employee's treating physician unless the board agrees unanimously on a case to case basis to approve a different selection will, according to testimony by the Workers' Compensation Division, defeat that purpose and substantially increase litigation costs to the administration and all parties to the system.

Section 19. This section codifies the board's interpretation of the meaning of compensation for statute of limitation purposes under AS 23.30.105 and partially complies with the Supreme Court's directive 14 years ago in Williams v. Safeway Stores, 525 P.2d 1087, 1089 n.6 (Alaska 1974), that the legislature clarify when compensation includes medical and other benefits and when it means time loss benefits only. For the purposes of filing a claim for additional disability compensation, the board has consistently concluded that when compensation payments have been made without an award, the claim must be filed within two years after the last payment of disability or death benefits and cannot be extended by the payment of medical benefits only.

Section 20. This section addresses the delays being experienced by the parties to the workers' compensation system in getting disputed cases before the board and the board's problems in timely docketing cases for hearing. While budget and staff constraints set an outside limit on the number of cases that can be heard, the board's analysis of the current backlog problem is that it is caused in large part because

of excessive continuances and the unpreparedness of the parties in presenting their case to the board, which results in the hearing record remaining open.

This amended section will require an affidavit be filed stating that the party has completed all necessary discovery obtained, all necessary evidence, and is fully prepared for the hearing. Once a hearing has been scheduled, a continuance will not be granted, and after the hearing the board will close the hearing record.

Section 21. This section shifts the burden of proof to the employee for establishing a compensable claim for mental injury resulting from work-related stress, consistent with the amendment to AS 23.30.265(17) found in section 40.

Section 22. This section codifies legislative intent in section 1 that findings of fact made by the board in its orders are conclusive unless the court specifically finds that a reasonable person could not have reached the board's conclusion.

Section 23. This section codifies the board's interpretation of the meaning of compensation for statute of limitations purposes under AS 23.30.130, which provides that a request for modification of a compensation award must be made within one year after the last payment of disability or death benefits. This is consistent with the amendment to AS 23.30.105 found in section 19.

Section 24. This section reflects changes consistent with the repeal and reenactment of AS 23.30.155(m) found in

section 27, concerning the reduction of reporting penalties.

Section 25. This section provides protection for the injured worker whose benefits are denied solely on the grounds that another employer or insurer may be liable for all or some of the benefits. This section requires that the most recent employer or insurer who is party to the claim and may be liable must pay the injured worker temporary disability benefits during the pendency of disputes over liability between various employers and insurers. This section also requires that when liability has been determined, any reimbursement, including interest and all attorney's costs and fees, must be paid within 14 days.

This amendment addresses the problems in Alaska's "last injurious exposure rule" by discouraging needless or frivolous litigation through assessment of costs and interest of successful employers against the ultimately liable employers. Most importantly, it also puts an end to the unconscionable delays in paying benefits to injured workers who under the current system must often wait months or years with no benefits while two or more employers/insurers fight over liability.

Section 26. This section increases the employer's penalty from 20% to 25% for late payment of compensation to an employee.

Section 27. This section repeals and reenacts employer/insurer reporting provisions requiring that an annual, instead of an anniversary, report be filed with the

board by March 1 of each year showing the total amount of all compensation by type, medical and related benefits, vocational rehabilitation expenses, legal fees, and penalties paid on all claims during the preceding calendar year. Currently, data is collected on a per claim basis through interim and claim anniversary reports. However, there is no data collected showing what employers/insurers have paid for claims on an annual basis, making it impossible to meaningfully analyze insurance rates or to make effective changes in the workers' compensation system.

Also, it is the purpose of this section to encourage compliance with the reporting system by assessing full penalties against employers/insurers who repeatedly fail to comply with reporting requirements, but forgiving the occasional reporting oversight for insurers showing substantial compliance. Additional civil penalties are included for those insurers who fail to comply with the annual report requirement.

Section 28. This section clarifies that if the employer is self-insured, the requirements of AS 23.30.155(c) and (m) in sections 24 and 27 apply to the employer.

This section also requires the board to notify the division of insurance if it is determined that an insurer has frivolously or unfairly controverted an employee's compensation. The division of insurance is then required to make a determination if the insurer has committed an unfair claim settlement practice under AS 21.36.125.

The section further requires that benefits paid to recipients residing in Alaska be paid by checks or other negotiable instruments drawn on Alaska banks or by certified check.

Section 29. This section repeals and reenacts the minimum and maximum rates of compensation to be paid an Alaska injured worker. It decreases the maximum weekly compensation rate from 200% of the state's average weekly wage, which for 1988 is $547 equalling a weekly compensation rate of $1094, to an absolute maximum of $700 per week. It increases the minimum weekly compensation rate from $110 to $154 per week, except in those cases where the employee does not provide documentary proof of past wages or the employee's spendable weekly wages are less than $154 per week. The minimum of $154 approximates the Alaska minimum wage. The purpose of this section is to redistribute workers' compensation dollars to provide a more livable compensation rate for low wage earners without unduly increasing employer costs. It is further the purpose of this section to override the Alaska Supreme Court's holding in Peck v. Alaska Aeronautical Inc., Op. No. 3240 (October 30, 1987), by providing for a fixed maximum compensation rate which can be predicted.

This section also reenacts the provision that Alaska rates of compensation shall be adjusted for those employees who leave the state, except for medical or rehabilitation services not available in Alaska, by the ratio of the cost of living in the locality the employee resides to that of Alaska. It also provides that the board, by regulation, shall determine and annually update living costs for the state and

other localities. A similar law providing for the adjustment of the Alaska compensation rate by ratios of states' average weekly wages to those of Alaska was struck down as unconstitutional in Alaska Pacific Assurance Co. v. Brown, 687 P.2d 264, 271 (Alaska 1984). However, the court suggested that an adjustment based on actual cost of living may pass constitutional muster.

Section 30. This section provides that if an employee is paid a permanent partial disability award and it is subsequently determined that the employee is permanently totally disabled, the permanent total disability benefits must be reduced by the permanent partial disability award, adjusted for inflation, as determined by the board.

This section also establishes a labor market for an injured worker's services that must be considered when determining whether the worker is permanently totally disabled. This section clarifies that not only the worker's area of residence, which may have little or no employment opportunities, but the area of last employment or the state will be considered as a labor market for his/her services. The purpose of this section is to make it clear that an employee not be classified as permanently totally disabled because he chooses to live in a small or isolated community with fewer employment opportunities.

Section 31. This section clarifies that failure to satisfy the remunerative employability definition as defined in AS 23.30.041(p)(2) does not mean that an employee is automatically permanently totally disabled.

Section 32. This section imposes a cap on temporary total disability by payment of benefits only up to the time of medical stability, as defined in AS 23.30 .265(34) found in section 41, but in no case longer than two years from the date of disability. This is consistent with the concept that temporary total disability be paid during the healing period, which in most cases occurs well within a one-year period. Following medical stability, the worker is paid permanent partial impairment benefits as reflected in section 33.

Section 33. This section repeals prior law and reenacts a totally new concept in permanent partial disabilities. All payments for permanent partial impairment will be based on a whole man concept in accordance with the American Medical Guides to Evaluation of Permanent Impairment Compensation. Under the Guides the impairment of any body part is computed as to how it affects total body functioning. Compensation is computed by multiplying the employee's actual degree of impairment by the appropriate adjustment factor by the maximum compensation rate of $240,000, but no permanent partial impairment payment may be less than $250. The section also provides that an impairment rating be reduced by a pre-existing permanent impairment; however, the prior rating will not negate a finding of permanent total disability.

Current law provides maximum schedules for fourteen various body parts, ranging from $2,800 to $59,000, plus a maximum unscheduled benefit of $60,000 based on loss of earning capacity for back and neck injuries. This section represents a redistribution

of benefits to those workers who have more significant injuries and disabilities from those with minor impairments that have little or no effect on employment status or earning capacity. In addition to providing for a more accurate and equitable compensation system, this section will significantly reduce current disputes and litigation in attempting to predict future loss of earning capacity, which is speculative, at best. It will also remove disincentives to minimize disabilities that are inherent in any loss of wage-earning capacity system.

Section 34. This section provides for payment of temporary partial disability benefits only up to the time of medical stability, consistent with the amendment to AS 23.30.185 found in section 32. It also reduces the maximum period for paying temporary partial disability benefits from five to two years.

Section 35. This section reenacts language necessary to determine an employee's wage-earning capacity for purposes of temporary partial disability. This language, which was previously found in AS 23.30.210 and is now repealed in section 42, pertains only to the payment of temporary partial benefits. It is consistent with the changes made in AS 23.30.190 found in section 33.

Section 36. This section amends AS 23.30.220(a) to narrow the instances where an employee's gross weekly earnings cannot be computed under AS 23.30.220(a)(1) based upon past earnings. Only in those rare cases in which the employee had no earnings or was voluntarily absent from the labor market for 18 months or

more during the two calendar years before injury will the gross weekly earnings be calculated under AS 23.30.220(a)(2). The board is then mandated to consider the nature of the employee's work and work history in determining the gross weekly earnings for calculating compensation, but in no event can the compensation exceed the employee's earnings at the time of injury.

This amendment overrides a long line of supreme court rulings in which the board was ordered to establish the gross weekly earning and therefore the compensation rate by speculating on an employee's future earnings. (See Johnson v. RCA-OMS, Inc., 681 P.2d 905 (Alaska 1984), and its progeny.) The board has consistently found that an employee's past earnings record is the best predictor of an employee's loss of earnings during the period of disability. Thus, except for the very narrow exceptions stated, the purpose of this section is to require that gross weekly earnings be computed by dividing by 100 into the employee's gross earnings in the two calendar years immediately proceding the injury. As a single issue, this change will have one of the most significant impacts on reducing litigation at both the board and court levels.

Section 37. This section provides that if contributions to a qualified pension or profit sharing plan have been included in an employee's gross earnings, as reflected in AS 23.30.265(15) found in section 39, the employer may offset compensation benefits by a like amount when the employee receives pension or profit sharing payments.

Section 38. This section enacts a new provision that prohibits an employer from discriminating in the hiring, promotion or retention of an employee who has in good faith filed a claim for or received compensation benefits. An employer who violates this section is liable for damages assessed by the court in a private civil action.

This section does not prohibit consideration of an employee's safety practices or physical and mental abilities nor does it prohibit inquiry into the employee's prior health or disability history for second injury fund reimbursement or determination of physical or mental capacities to meet the demands of employment.

Section 39. This section amends the definition of an employee's gross earnings to include total contributions by an employer to a qualified pension or profit sharing plan for the two prior years multiplied by the percentage of vested interest at the time of injury. This change is consistent with the board's interpretation of the Supreme Court's ruling in Ragland v. Morrison-Knudsen Co., Inc., 724 P.2d 579 (Alaska 1986).

Section 40. This section amends the definition of injury by providing specific language that the term does not include mental injury caused by mental stress unless the work stress was extraordinary and unusual in the profession and the work stress was the predominant cause of the mental injury. Specifically excluded are those mental injuries that result from disciplinary actions or changes in job status taken in good faith by the employer. Unlike all other types

of injuries, it further places the burden on the employee to provide work-connection. See the proposed amendment to AS 23.30 .120 found in Section 21.

This change is consistent with prior board rulings in which the employee's stress had to be greater than all employees in the profession must experience to be compensable. This section is intended to override the Alaska Supreme Court rulings in Wade v. Anchorage School District, 741 P.2d 634 (Alaska 1987), and Fox v. Alascom, 718 P.2d 977 (Alaska 1986).

Section 41. This section adds a new definition which provides that medical stability means the date after which no further measurable improvement is expected to result from additional medical treatment or care. This codifies the meaning of the healing period during which time temporary total or temporary partial disability benefits are paid, and is consistent with the changes made in sections 10, 32 and 34. Currently, temporary disability benefits are paid until economic or employment stability regardless of time factors or the status of the employee's medical condition.

Section 42. This section repeals provisions that are unnecessary or inconsistent with the repeal and reenactment of AS 23.30.200(b) found in section 35.

Section 43. This section contains transitional language necessary to change reporting from an anniversary to an annual system. It specifically provides that each

employer is subject to this change for all claims existing as of December 31, 1988.

Section 44. This section mandates a rate decrease for workers' compensation premiums of no less than 6%, effective July 1, 1988 through January 1, 1990.

Section 45. This section contains transitional language to include a grandperson clause to allow current rehabilitation specialists who do not have the credentials required under AS 23.30.041(p)(6) to continue to practice for one year after adoption of this bill, at which time they must have gained the required credentials or be barred from further practice as a rehabilitation specialist in the workers' compensation system.

Section 46. This section delineates the amendments to the Act that apply only to injuries sustained on or after July 1, 1988.

Section 47. This section provides that the amendment to the Act under section 40 applies to injuries sustained on or after the effective date of section 40.

Section 48. This section provides that sections 40 and 47 of this Act takes effect immediately under AS 01.10 070(c).

Section 49. This section provides that sections 1-39, and 41-46 of this Act take effect July 1, 1988.

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

Suite 850, One S.W. Columbia Street
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THE ALASKA CHAPTER*

ASSOCIATED GENERAL CONTRACTORS OF AMERICA, INC.

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RESPONSIBILITY
INTEGRITY

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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
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Fairbanks, Alaska 99701-4566
(907) 456-4248
(907) 456-1206

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
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January 14, 1988

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/lk

Phil Thingstad
President
Western Alaska Building
and Construction Trades

PT/lk
Attachment

GUIDE TO

INSURANCE REHABILITATION SPECIALISTS

CERTIFICATION

CERTIFICATION OF INSURANCE REHABILITATION SPECIALISTS COMMISSION

A DIVISION OF

BOARD FOR REHABILITATION CERTIFICATION

1156 SHURE DRIVE, SUITE 350
ARLINGTON HEIGHTS, ILLINOIS 60004

SECTION 3. CRITERIA FOR ELIGIBILITY:

To be eligible to sit for the CIRS examination, an applicant must meet ALL requirements in ONE of the categories listed below. Education and employment experience requirements must have been fully satisfied by the application deadline date **(JANUARY 1, OR JULY 1)**. Applications not meeting the eligibility criteria of one of the following categories at the application deadline date will be referred to the Credentials Committee for review to determine eligibility. Please be reminded, the application processing fee is non-refundable. Read categories carefully. **CIRSC will charge a $20.00 handling fee for any check returned for non-sufficient funds.**

CATEGORY ONE

Degree or Certification or License:	Current Registered Nurse (RN) Valid Certified Rehabilitation Counselor (CRC) **or** Master's degree or Doctorate degree in: Rehabilitation Counseling, Rehabilitation Administration, Work Adjustment, Vocational Rehabilitation, Job Placement, or Psychology.
Acceptable Employment Experience Required: (See definition Section 4)	A minimum of two years full-time (or the equivalent) employment providing direct or indirect rehabilitation services to a disabled population receiving benefits from a disability compensation system.

CATEGORY TWO

Degree Required:	Bachelor's, Master's, or Doctorate in any other discipline.
Acceptable Employment (See definition Section 4)	A minimum of four years of full-time (or the equivalent) employment providing direct or indirect services to a disabled population receiving benefits from a disability compensation system.

JOHN H. LEWIS
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Education: B.S.B.A., University of Florida, 1963
J.D., Duke University School of Law, 1967

Experience: Assistant to Dr. Arthur Larson
Larson's The Law of Workmen's Compensation
1965-1974

Instructor In Law
University of Miami School of Law
1973

Chief Counsel and Associate Executive Director, National Commission on State Workmen's Compensation Laws, 1971-1972

Florida Governor's Task Force on Workmen's Compensation, Vice-Chairman, 1972-1973

Florida Workmen's Compensation Advisory Council, Chairman, 1974-1977, Vice-Chairman, 1977-1980

Legal Advisor, Florida Self-Insurance Rules Advisory Committee, 1976-1977

Research Analyst, Interdepartmental Workers' Compensation Task Force, 1975-1976

Consultant: U.S. Senate, U.S. Department of Labor, Alaska State Legislature, Pennsylvania State Legislature, Alaska Workers' Compensation Board, Rhode Island Department of Business Regulation, Delaware State Chamber of Commerce, Louisiana Association of Business and Industry, Alaska State A.F.L.-C.I.O, California Workers' Compensation Institute, Office of the

Governor-State of Rhode Island, Massachusetts House of Representatives, Kentucky Legislative Research Commission, Maryland State Chamber of Commerce, California State Senate, National Conference of State Legislatures, The Government of the Territory of American Samoa, Oregon Workers' Compensation Department, Michigan Department of Labor-Department of Commerce, Office of Inspector General-U.S. Department of Labor, Minnesota Department of Labor and Industry, Maine Bureau of Insurance, United States General Accounting Office, Office of the Governor-State of Illinois.

Practice of law, 1967-80, with emphasis on civil litigation and workers compensation matters.

Reports and Articles:

A Workmen's Restoration System, Supplemental Studies for the National Commission on State Workmen's Compensation Laws, 1972.

An Analysis of State Workers' Compensation Agency Activities, Report for the Interdepartmental Workers' Compensation Task Force, 1977.

An Analysis of the Alaska Workers' Compensation System, Report for the Alaska State Legislature, 1982.

Cost Implications of the Hawaii Workers' Compensation System: An Analysis of Cases, Costs and Law, 1984.

The Alaska Workers' Compensation Law: Fact-Finding, Appellate Review, and the Presumption of Compensability, Alaska Law Review, Volume 2, June 1985, Number 1 (With Arthur Larson).

Permanent Partial Disability Benefit Recipients In The Kentucky Workers' Compensation System, Report for the Kentucky Legislative Research Commission, 1985.

Major Issues In The Oregon Workers' Compensation System, Report for the Oregon Workers' Compensation Department, 1987.

Minnesota debates work comp cuts

By MEG FLETCHER John-fyi

ST. PAUL, Minn.—Employers and workers compensation surers are squaring off against organized labor in a politicly charged battle to cut the high cost of workers compensaon in Minnesota.

The Legislature last week—amid intense lobbying efforts employers, insurers and labor—was hammering out a bill at would cut workers compensation benefits, roll back and eze workers comp rates for a period and strengthen the te's workers comp rate regulatory system.

The state's Democrat-controlled Legislature and statese have made it clear that they will approve cuts in workcompensation benefits only if rate regulation is inased.

Reports released recently by the state's auditor and labor d industry department blamed high benefits for the high t of Minnesota's workers comp system, which the reports is among the most costly of all states.

Legislators and lobbyists worked feverishly last week to to determine what level of rate regulation would be suffint to persuade legislators to vote for benefit cuts before ir adjournment, tentatively scheduled for tomorrow.

"The situation now is confused and unclear, as everyone is ing to find the right mix," said Brad Lehto, administrator he House Committee on Labor Management Relations.

"It's a constant pulling and tugging, and the politics are y intense," said Robert Johnson, senior vp of the Insure Federation of Minnesota.

Legislators last week struggled to come up with a bill that v. Rudy Perpich would sign, because it is unlikely the ernor's veto could be overridden, most legislative observsaid.

Gov. Perpich is looking for "fair and reasonable" legisla that first addresses any unreasonable costs or inefficiens by insurers, lawyers and medical providers, said Ray n, commissioner of the Minnesota Department of Labor Industry. "The injured worker should be at the back of line," he added.

However, the auditor's office report said: "Insurer adminative expenses and profits are not significant factors that e to explain why Minnesota's workers compensation s are higher than rates in comparable states."

Workers compensation has been a concern to the Legisla for more than a decade, according to separate reports ased earlier this year by Mr. Bohn's department and Office of the Legislative Auditor.

gnificant reforms were enacted in the early 1980s, inling changing to competitive rating from administered ing and creating a competitive state fund.

owever, there is a "continuing and growing concern that nesota's system is costly, complex and not serving well interests of either employers or employees," the auditor's rt said.

From 1983 to 1986, workers compensation premiums dou in Minnesota, while they increased only 54% in the rest e nation," the Labor Department report said.

e report noted that only 26% of the premium increase due to increases in payroll in the state.

"Workers compensation rates also have increased," the Labor Department report said. "In 1984, Minnesota had the 14th-highest rates out of 39 states with comparable data; in 1987 they were the fourth-highest among the 39 states."

In fact, Minnesota's workers comp rates in 1987 were about twice as high as the rates in Wisconsin, Iowa and South Dakota, the auditor's report found.

In addition, the state's special compensation fund has an unfunded liability of about $1.5 billion, the auditor's report says. The fund helps spread the cost of benefits for totally disabled workers, handicapped workers and uninsured employers among all insurers.

"Minnesota's workers compensation costs are high mainly because benefits are high, and those costs can be most directly brought under control by limiting certain benefits and eliminating others," the auditor's office concluded.

The report said benefits are "substantially" more generous than benefits in other states because Minnesota:

- Is one of 12 states with a cost-of-living escalator. The escalator is expected to add about $45 million to benefits paid to workers injured in 1986, excluding benefits paid under self-insured programs.
- Offers minimum benefits and supplementary benefits that are among the nation's most generous.
- Allows temporary partial benefits to last indefinitely, instead of ending when the healing period does.
- Has long-term disability cases that account for 3% of all cases but create 73% of the total benefit cost. "The great majority of expensive long-term cases do not involve catastrophic injuries," the auditor's office report found. "Quite a few are medically not very serious."

Many of the proposed recommendations in the auditor's report are incorporated in S.F. 2428, the bill legislators were working on last week, according to John Lennes, a lobbyist for the approximately 80 large employers that belong to the Minnesota Business Partnership.

The bill was introduced by Sen. Florian Chmielewski, a member of the Democratic Farm Labor Party from Sturgeon Lake, Minn.

A spokesman Sen. Chmielewski said the bill would:

- Cap temporary partial benefits at two-thirds of the difference between the higher wage an employee made before his injury and the lower wage he made after his return to work. This measure would save an estimated $52 million in benefits annually.
- Limit permanent total benefits by imposing a new 20% minimum disability requirement before permanent benefits can be collected and make it clear that a lack of jobs in a claimant's area does not make him eligible for permanent total benefits. Currently, there is no minimum disability requirement for employees to collect permanent total benefits. This provision of the bill is expected to save $40 million annually.
- Clarify that temporary total benefits end 90 days after maximum medical improvement is reached or the employee returns to work, retires or refuses to take a job he can perform.
- Reduce the state's cost-of living adjustment and delay implementation of the escalator to three years after injury rather than one year after an injury.
- Abolish the state's Workers Compensation Court of Appeals.
- Freeze all medical and rehabilitation provider fees, excluding hospital charges, through Sept. 30, 1990.
- Limit coverage under second-injury funds—which pay employees that return to work for a different employer after an injury and again are injured—to employees that are at least 25% disabled after the second injury. However, the second employer would be liable for up to $3,500 in medical expenses, an increase from the current $2,000.
- Totally integrate the state's workers comp benefits with Social Security benefit payouts, which should reduce the state's payout.
- Limit defense attorney's fees to the $6,500 maximum currently in effect for plaintiff's attorneys.
- Change the minimum benefit from $75 per week to 20% of the state's average weekly wage or an individual's actual wage, whichever is less.
- Assign all work comp administrative costs to the state's general revenue fund instead of the state's special compensation fund, which is generated by insurer assessments.

In addition, the bill would change the way workers compensation insurers file rates in the state. Currently, the state has an open competition system, under which rates must be filed within 15 days after being implemented; however, the state insurance commissioner must approve the rates unless he finds them unfair or discriminatory.

The bill would institute a file-and-use system, under which insurers would be required to file rates before they were implemented. In addition, the bill would make it easier for the commissioner to disapprove rates.

The bill also calls for a 15% reduction in workers compensation rates from Aug. 1, 1988, to Jan. 1, 1989. That would save employers about $160 million, Mr. Michaels said.

In addition, the bill proposes a freeze on additional rate increases through the end of this year for insurers that have already increased rates in 1988.

Mr. Lennes said that most employers in the organization he represents would not be affected by the rate rollback and freeze provisions of the bill because they self-insure their workers comp exposures.

However, he said some smaller employers that buy insurance may favor those proposals.

Michael Frohman, counsel for The Alliance of American Insurers Workers Compensation Department, said insurers generally want to keep pricing as it is and oppose the freeze and rate reduction. "We think pricing reflects the system. It's not a cause of the problem, but a symptom of it," he said.

"However, to get benefit cuts, the industry will look at some changes," he said.

Many sources say chances are better than 50-50 that some work comp proposal—but not necessarily the Chmielewski bill—will be passed by the Legislature this session.

However, an earlier proposal by another state legislator to establish a monopolistic state fund is considered dead.

Labor generally supported that measure, but because of the cost of establishing the program, legislators turned deaf ears, said a spokesman for the state AFL-CIO. ■

Business

E

Put in my Work Comp file.

Comp bill flawed, Croft says

By Yereth Rosen
Times Writer

The workers' compensation legislation that sailed through the Alaska Senate by a vote of 15-0 and, in revised form, appears to have enough support to pass the House is loaded with too many problems to save employers money in their workers' compensation insurance premiums, an attorney specializing in workers' compensation claims said Wednesday.

Chancy Croft, a claimants' attorney and former state legislator, presented his argument against the legislation that's scheduled to be heard by the House Judiciary Committee. Croft spoke at a luncheon sponsored by the Anchorage Job Service Employer Committee.

The legislation is aimed at simplifying and controlling a compensation system that has escalated in cost to employers and in complexity to employees. Both employers and workers are frustrated with a system in which insurance premiums have risen an average of 40 percent in the last two years and the time to settle workers' claims has expanded 70 percent, Croft said.

But the workers' compensation law pending in the Alaska Legislature might make matters worse, not better, he argued.

Croft said the current workers' compensation legislation is flawed, much like the workers' compensation legislation drawn up in the late 1970s — legislation that he as a legislator voted against — was flawed.

"No legislature, in my experience as a legislator, had produced more legislation by anecdote than workers' comp legislation," he said.

As before, he said, legislators have drafted a workers' compensation bill without some crucial information about what is driving premiums.

"One real problem with the legislation is there is an expectation now for premium reductions," he said.

If the hikes in insurance premiums have been justified, and the legislature isn't addressing the real causes of the premium increases, then non-Alaska insurers will have no choice but to pull out of the state, he said.

Croft criticized what he said were the arbitrary limits the legislators hope to place on injured workers' benefits.

Much has been made of the maximum weekly benefit of over $1,100 that the current workers' compensation statutes allow injured workers, he said. In fact, less than 0.1 percent of Alaska's injured workers are awarded weekly compensation in excess of $700, the dollar maximum that the legislation would impose.

Still, Croft argued, the $700 limit is arbitrary and might not meet the needs of some injured workers who've suffered extreme economic losses due to their injuries.

Another arbitrary limit the legislation would impose is the two-year maximum for temporary disability payments, Croft said. Severely in-

See Workers, page E-4

Chancy Croft
... cites policy departure

Workers: Expectations high

Continued from page E-1

jured workers, such as those suffering brain trauma or burns, might be able to recover from their injuries but might need more than two years to do so, he said.

Croft said he's troubled by the aim of the pending legislation to pay benefits for permanent partial disabilities based on the severity of the injury instead of on the basis of lost earning power.

That emphasis on medical impairment rather than earnings impairment is contrary to the tradition of workers' compensation, he said.

Authors of the legislation say it's written so that the most seriously injured workers get the most money in compensation, Croft said.

"That may be good or bad. You may like it or not. But that is a significant and major departure" from previous workers' compensation law in Alaska.

The "arbitrary" nature of the legislation "places too high a premium on getting the matter resolved," Croft said. "And it loses sight of the fact that what we're dealing with is human beings."

An injury at work "probably affects the average person as seriously as anything in their life," Croft said.

Computer

good point

Get Cal. study — Severity of disab. does track well w/ loss of earning cap — That's assuming that loss of earn cap. is a fair method. And some will make more under this bill

ALASKA STATE AFL-CIO

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MANO FREY
Executive President

TO: ALL HOUSE AND SENATE MEMBERS
FROM: MANO FREY, EXECUTIVE PRESIDENT
RE: WORKER'S COMPENSATION

The Joint Labor-Management Task Force has worked for more than a year negotiating changes to the current Worker's Compensation Law that would result in premium reductions to the employer; and, at the same time, maintain fairness in compensating the injured worker.

The legislation now being considered is a result of the task forces' efforts. It certainly does not attempt to address every complaint or concern regarding the current worker's compensation statute, but it does accomplish the stated goal of providing some necessary relief to the employer while providing benefit safeguards for the employee. In addition, reforms are included to several areas of the law that caused abuse and hardship to the employees in the past.

I strongly urge your support for this bill.

January 14, 1988

Senator Tim Kelly, Chairman
Senate Labor and Commerce Committee
Representative Dave Donley, Chairman
House Labor and Commerce Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Senator Kelly, Representative Donley and members of your committees:

As Co-chairmen of the Management/Labor ad hoc committee we are pleased to present our proposal for changes to the current workers' compensation act. Our proposals represent the culmination of more than a years effort by hundreds of professionals from many different walks of life. It is not intended to be a final solution to the high cost of workers' compensation in Alaska, but represents instead our most recent step in our ongoing effort to improve the benefit levels for injured workers while at the same time reducing the cost that must be borne by Alaskan employers.

BACKGROUND

PRE AD HOC COMMITTEE

In 1968, the Alaska weekly maximum workers' compensation benefit was $113. By 1974, the maximum weekly compensation rate rose to $175. During this period of time, Congress established the National Commission of State Worker's Compensation Laws to "undertake a comprehensive study and evaluation of State workmen's compensation laws, in order to determine if such laws provide an adequate, prompt and equitable system of compensation."

In a pro-labor atmosphere and in reaction to some of the National Commission's findings, the Alaska legislature in 1975 amended the Alaska Workers' Compensation Act (Act) by providing a gradual phase-in of the 200% of state average weekly wage maximum, doubling the scheduled permanent partial disability maximum in the Act, and eliminating the $30,000 limit on unscheduled permanent partial disability.

Management bitterly contested the 1975 labor-sponsored amendments. As a result, little thought was given by labor, management or the legislature to workers' compensation as an effective delivery system. Only a portion of the 1972 Commission's recommendations were enacted, but due to the changes that were adopted, workers' compensation insurance premiums increased 35.2% in 1975, 13.0% in 1976, and 6% in 1977.

In 1977, management successfully sponsored legislation reimposing a limit on "unscheduled" permanent partial disability -- this time at $60,000. Other meaningful changes were impossible to achieve and in 1979, a pro-management group, the Alaska Conference of Employers (ACE), was established to study the problems and recommend legislative changes necessary to reduce the high cost of workers' compensation in Alaska. The employers also created another group, the Workers' Compensation Committee of Alaska (WCCA) and charged that group with the task of placing the recommendations of the ACE study into legislation. The pressure of these two management groups led to the creation of the 1980 Legislative task force to study the Alaska workers' compensation system and recommend changes. The committee, co-chaired by Senator Terry Stimson and Representative Brian Rogers, included representatives from labor, management, and the insurance industry. Ultimately the joint effort failed at the close of the 1981 legislative session and no corrective legislation was recommended.

At that time, WCCA commissioned a study by Daryl Cody and Associates on the problems with workers' compensation in Alaska and their recommendations for changes. This study was presented to Representative Terry Martin in January, 1982 with the recommendation that the suggested changes be incorporated into legislation.

With the Cody study, the opportunity for the classic management vs labor confrontation on workers' compensation presented itself. This time however, logic prevailed. Labor, represented by the AFL-CIO, and management, represented by WCCA, called for a joint public meeting for the purpose of selecting representatives to sit on an "ad hoc committee" to recommend changes to the Alaska workers' compensation statutes.

THE LABOR/MANAGEMENT AD HOC COMMITTEE

The first order of business for the new ad hoc committee was to formulate the objectives of the group. The following were adopted at the first meeting:

1. Provide an effective system for the delivery of benefits and services;

2. Discourage fraudulent claims and fraudulent statements to obtain or deny workers' compensation benefits;

3. Provide an effective deterrent for those employers failing to provide required workers' compensation insurance;

4. Increase incentives and decrease disincentives for returning to work after an injury;

5. Encourage safety;

6. Provide for effective rehabilitation of an injured worker;

7. Redistribute dollars from those workers not severely injured to those seriously injured workers who have lost the ability to be gainfully employed as a result of their injury;

8. Reduce or minimize the impact of workers' compensation premiums on the employer;

9. Continue to study the Alaska workers' compensation system to identify problems and recommend solutions; and,

10. Stabilize the atmosphere for discussing proposed changes to the Alaska Workers' Compensation Act.

Due to time problems, the Ad Hoc committee agreed to limit its initial efforts to:

1. Providing for the early identification of injured workers who potentially need rehabilitation;

2. Providing for the early return to direct employment;

3. Providing incentives to return to work and reduce disincentives to return to work;

4. Providing for appropriate criminal penalties for willful misrepresentation of facts for the purpose of obtaining or denying benefits; and,

5. Providing a mechanism for cease and desist orders to be issued against uninsured employers.

The Ad Hoc committee was successful in having its legislation agenda passed in 1982 and 1983.

Since 1983, the Ad Hoc committee has continued to meet to work on problems that became apparent or problems that were created by the court system in their interpretation of the statute. For

the most part, however, the committee dealt primarily on relatively minor problems and had not undertaken an in-depth review of the system and its evolution since the legislation passed in 1982 and 1983.

CURRENT EFFORTS OF THE AD HOC COMMITTEE

The cost increase for workers compensation announced in November of 1986 caused the ad hoc committee to reexamine the problems with the system and the need for changes. It was apparent that the system had deteriorated significantly since the last major modifications in 1983. The quality of service to the injured worked had decreased and the cost to the employer had increased. In fact, from 1983 to 1986, the incurred cost of workers' compensation increased from $70.2 million to $150.3 million while employment in the state decreased. Since the incidence rate of injuries remained relatively constant during this period, it was apparent that the cost per claim had more than doubled.

In this setting, the ad hoc committee decided that the best approach was a complete examination of the current statute. In order to establish priorities, both management and labor met with their respective constituents and developed a list of issues that needed attention. These lists were then compared, merged and a plan of action developed. Since the problems were complex, it was decided to concentrate on the issues of vocational rehabilitation, medical services, compensation and benefits in 1987 and defer other items until 1988.

The current members of the ad hoc committee are:

Robert Anders - Co-chair and labor member of the Workers' Compensation Board; business agent - Operating Engineers

Mary Pierce - Co-chair and management member of the Workers' Compensation Board; Executive Director, Medical Indemnity Corporation of Alaska

Richard Cattanach - Vice President, Finance, Unit Company

Kevin Dougherty - AFL-CIO

David Gottstein - Director of Distribution, Carr Gottstein, Inc.

Ralph Lewis - Vice President - Ketchikan Pulp and Paper

Ralph Mingo - Safety Engineer, Teamsters Local 959

Stephen Rehnberg, CMA - Vice President, Finance, Tanadgusix Corporation

Joseph Thomas - Business Agent, Laborers Union

Kenneth Weist - Business Agent, Roofers

During the past year, the ad hoc committee met weekly in an attempt to define the various problems and explore potential solutions. The advice and suggestions of hundreds of professionals were sought. Medical doctors, chiropractors, vocational rehabilitation providers, lawyers, and others knowledgeable in workers' compensation were consulted and provided input to either the ad hoc committee or a WCCA study committee. During the entire process, the committee sought the advice and counsel of the Division of Workers' Compensation and at least one member of the division was in attendance at all the committee meetings.

Briefly, the proposed legislative changes for 1988 can be outlined as follows:

Vocational Rehabilitation

1. Change the current system from being mandatory to voluntary;

2. Limit the program to those injured workers prevented from performing the duties of their profession;

3. Limit rehabilitation programs to two years;

4. Limit rehabilitation plan costs to $10,000;

5. Pay a permanent partial disability or a total permanent disability at the total temporary disability rate until plan completion or termination. The remainder, if any, is to be paid in a lump sum;

6. Establish employability, not employment, as the goal of rehabilitation;

Medical

1. Subject medical payments to the usual, customary and reasonable fees charged in an area;

2. Allow the injured worker to make one change in treating physician before seeking the consent of the employer;

3. Limit treatment plans to no more than 20 visits within 60 days;

4. In the case of a dispute, allow the board to appoint an Independent medical examiner whose opinion shall, in the absence of clear and convincing objective evidence to the contrary, be presumed to be correct;

Compensation

1. Change the maximum weekly benefit from $1108 to $700, and increase the minimum from $110 to $154;

2. Allow an employees vested pension contributions to be considered in determining the weekly wage;

3. Limit the controversy in the determination of weekly earnings by clarifying the process for such determinations;

4. Adjust the weekly compensation benefits for differences in the cost of living for claimants residing outside Alaska;

Benefits

1. Schedule all injuries and base disability payments on the "whole man" concept;

2. Increase the permanent partial disability benefit for the more severely injured worker;

3. Limit temporary total disability payments to two years;

Other

1. Provide legislative intent language for the courts and future legislatures;

2. Bar workers' compensation claims if the employee falsified his application and the falsification contributed to a subsequent injury;

3. Establish criteria for stress claims;

4. Prohibit discrimination of an employees who files a workers compensation claim;

5. Assure the maintenance of workers' compensation payments to employees when questions exist as to the ultimate responsibility for liability;

It is the belief of the ad hoc committee that the changes recommended should lead to an improved delivery system for workers' compensation at a lower cost to Alaskan employers. We believe that the savings will come primarily from a reduction in the amount of litigation, a reduction in the number of injured workers entering vocational rehabilitation programs, and a reduction in expenditures for medical services. These reductions

should not however negatively impact the quality or quantity of services available to an injured worker. Rather, it is our belief that the injured worker will be able to avail themselves of better services in a more timely manner.

Determining the cost impact of the proposed changes will be difficult and will require a certain amount of faith. An evaluation of the cost savings due to a reduction in litigation, the impact of a voluntary vocational rehabilitation system, the acceptance of a usual, customary, and reasonable limit on medical expenses, the limitation on medical utilization, scheduling those injuries that are currently unscheduled, and other similar items will be difficult if not impossible. Quantification and estimation necessary for a precise actuarial determination of the impact of these recommendation is not possible and accordingly, will require assumptions as to what "might be". The net result will only be as good as the assumptions that were used to determine what "might be". It may be necessary for the legislature to accept, as management and labor has, that the changes should logically lead to lower costs in the system with no adverse impact on the injured worker. If the legislature can make this commitment of faith, we would like to ask them to join us as we measure the actual results of our changes and work with us to continue to make modification when and where appropriate.

Sincerely,

Robert Anders

Mary Pierce

SECTIONAL ANALYSIS OF WORKERS' COMPENSATION
TASK FORCE SB 322 AND HB 352

Section 1. Parts A and B:

This intent language is meant to give a clear message to the courts that they are not to construe workers' compensation laws in favor of any party but to be fair and to decide cases upon their merit and always within the confines of the written statute. It is also intended that the Board possess the weight of fact-finding authority and that its decision, if supported by evidence, is conclusive.

Part C:

Further, it is the legislature's intent to address the Alaska Pacific Assurance Co. v. Brown, 687 P.2d 264 (Alaska 1984), decision and constitutionality of the cost of living between claimants receiving benefits in Alaska and living elsewhere in the United States.

Section 2. This section gives the Department the authority to establish and maintain a roster of rehabilitation specialists or physicians that are needed for dispute resolutions under two other sections: AS 23.30.041 (vocational rehabilitation) and AS 23.30.095 (medical benefits).

Section 3. This section mandates the department to adopt new regulations if one is declared invalid by the supreme court.

It is our intention to insure that any new regulations adopted under this section have retroactive as well as prospective application, so that everyone is treated equally. We question whether the legislative drafter's language fulfills this intent, and request that a definitive answer be obtained.

Section 4. This section provides the employer with protection against an employee who falsely represents his/her physical condition, and the employer relies upon knowledge of his/her physical condition for job placement, and the employee is then injured. The intent of this section is to uphold the Board's decision in Robinett v. Enserch Alaska Construction, AWCB No. 870210 (September 4, 1987), and is a contract of hire issue.

Section 5. This section is a minor change made by the administration to provide more timely payments to the Second Injury Fund.

Section 6. In this section we have completely revised the vocational rehabilitation statute.

Parts A and B:

This subsection defines a reemployment services administrator and his duties. This reemployment services administrator is selected by the Board and serves to perform several functions, some of which include enforcing regulations, recommending regulations, establishing performance and reporting criteria to be adopted by the Board, enforcing the reemployment benefits provided under AS 23.30.041, and reviewing on an annual basis the performance of the rehabilitation specialists. The reemployment services administrator is also charged with submitting to the Department a variety of reports relating to vocational rehabilitation statistics.

Part C:

This is a guide to the employee's opportunity to enter into a voluntary rehabilitation program. This sets forward an eligibility evaluation to establish the employee's eligibility for future vocational rehabilitation services. It is important to note here that either an employee or an employer may request the eligibility evaluation. The rehabilitation specialist that is chosen to do the eligibility evaluation comes from a roster maintained by the reemployment services administrator. This system should provide for a fair evaluation to each employee without any bias toward a specific rehabilitation specialist. Unfortunately the dispute resolution process for eligibility disputes was omitted during the drafting of the bill.

Part D:

If found eligible for rehabilitation benefits the employee is responsible to request in writing his/her desire to enter into a vocational rehabilitation program. Part D also sets out the criteria under which an employee will be found eligible for such a program.

Part E:

This section specifically speaks to an employee's ineligibility for reemployment benefits. If the employer offers employment that is within the employee's physical capacities at a wage equivalent to 60% of the worker's gross hourly wages at the time of the injury and that new employment allows the employee to be employable in other jobs that exist in the labor market, then the employee is not eligible for reemployment benefits. If the employee has been previously rehabilitated in a former workers' compensation claim and then proceeded to return to work in the same or similar occupation, the new employer is not responsible for further rehabilitation. This criteria should be an incentive for employers to return to work an injured employee, if possible.

Part F:

This part outlines the choice of reemployment specialist and the employee's and employer's involvement in that choice. It also outlines the goals of the reemployment plan and the criteria that must be met.

Part G:

This part lists the various outcomes of a reemployment program. These must be achieved in the shortest possible time and insure remunerative employability but <u>not</u> remunerative employment. This is meant to discourage elaborate rehabilitation plans and encourage an injured worker to return to the work force.

Part H:

This discusses who are parties to this contract.

Part I:

This part addresses non-cooperation by the injured worker. Not included here, although it should be, is the resolution process we propose in a situation where there is non-cooperation.

Part J.

This part outlines time limits in the reemployment benefits process. Time limits are: (1) benefits may

not extend past two years from the date of plan acceptance at the discretion of the employer; (2) the employee, if electing reemployment benefits, must do so within 60 days of the employers notice of injury. (If the employee is in fact unable to make this selection because of an unusual physical injury perhaps in a coma or in the hospital with severe injuries, then there is an exception to this 60-day limitation); (3) the chosen rehabilitation specialist has 30 days to determine the employee's eligibility for reemployment benefits (if there are unusual or extenuating circumstances the reemployment services administrator may grant additional time); (4) the employee and employer have 10 days to select a rehabilitation specialist; (5) the plan must be developed and submitted within 90 days of the determination of eligibility; (6) is to caution against employees that would not be physically able to engage in the plan and allow them to do so upon their physician's approval. All of these time lines are intended to assist the employee in a speedy rehabilitation plan and not to prolong an employee's entrance back into the work force. This section also sets forth various disputes and resolution processes with final decision-making power by the Board.

Part K:

This discusses costs of the plan and compensation to the employee while in the plan. The total cost of the plan shall not exceed $10,000.00. In order to encourage the employee to complete the plan, the employee's temporary total disability benefits cease after he/she reaches medical stability. But if these benefits cease before the plan is complete, we have established a mechanism whereby the permanent impairment benefits will then be paid at the temporary total disability rate. In order to further protect the employee if the permanent impairment benefits are exhausted, the employee will continue to be paid at a rate of wages equal to 60% of the employee's spendable weekly wages not exceeding $525.00. Any remaining permanent impairment benefits after the employee has completed the plan will be paid in a single lump sum. The purpose of this section is to provide the employee with the necessary money to enable for self-support during the rehabilitation program.

Part L:

In this part of the vocational rehabilitation statute we are trying to establish some professional standards regarding who is allowed to complete eligibility evaluations.

Part M:

In this part we have included several definitions specific to vocational rehabilitation.

(1) Employability is defined to mean an employee has the ability to engage in employment but he/she hasn't necessarily achieved employment. (2) Labor markets have been expanded to include geographical areas outside of the State or in a different part of the State. (3) Further, there are definitions of physical capacity and physical demands. (4) A rehabilitation specialist is defined as a Certified Insurance Rehabilitation Specialist. (5) Remunerative employability is defined in this section also.

Note on Section 6:

As part of the legislative process we moved quickly from a work draft to a bill. There are certain sections of the vocational rehabilitation statute, AS 23.30.041, that are erroneous, and items not included in the bill. It is our intent to request the opportunity to look at this section and recommend some changes consistent with our intent. This is applicable only to AS 23.30.041.

Section 7. This section was amended to add the additional protection for an employer whose employee's claim is barred under AS 23.30.020(b) (false representation as to physical condition) from being sued in a court action. (See Section 4.)

Sections 8, 9, 10, 11, 12, and 13 all speak to medical benefits as provided under the Workers' Compensation Act. Our intent was first to try and curb abuses that have occurred under this system and the cost of those abuses. Currently Alaska, with medical costs at 38%, has the highest medical costs of any state in the nation (percentage of total costs of workers' compensation).

Section 8. The employee in this section still has the opportunity to choose a physician but is limited to a single change of a treating physician. An additional change can be made only with written consent of the employer. We are not intending to hamper an employee's attending physician from referring that employee to a specialist when necessary.

Section 9. This section clarifies that, at reasonable times throughout disability, the employee must submit to an examination by a physician or surgeon of the employer's choice and establishes a presumption of reasonableness.

Section 10. This section allows the employer to check on the reasonableness of treatment without discontinuing the employee's medical treatment by controversion. This section also sets forth a process of dispute resolution by providing the employer with the right to a separate evaluation.

Section 11. This section adds language establishing a medical fee standard as usual, customary, and reasonable. The intent was for fees to be paid using HIAA (Health Insurance Association of America) as a standard for what is usual, customary and reasonable. We allow the Board to determine what is used as the standard because in subsequent years HIAA may not be considered to be the best choice of a standard. (HIAA is a national service which provides medical fees by zip code). Physicians are familiar with this standard as it is normal for usual, customary, and reasonable fees to be paid in non-occupational benefits. Also, our intent is that in no case would an employee be charged for any medical services. The physician will be paid at 100% of the HIAA's usual, customary and reasonable fee.

Section 12. This section is repealed and reenacted authorizing the board to appoint or contract with a medical services review committee to assist and advise on the appropriateness, necessity and cost of medical and related services.

Section 13. This new subsection gives the Board the opportunity to select a physician to resolve a medical dispute from a list established and maintained by the Board. It is presumed that greater weight be given to the opinion of that independent medical examiner, and he will be presumed to be correct unless there is absolutely clear and convincing objective evidence to the contrary. Also, this section provides some protection to the selected physician in the rendering of his opinion. We felt it was very important to provide a dispute resolution process in the new statute to resolve medical issues by medical experts.

Section 14. This section codifies the board's interpretation of the meaning of compensation for statute of limita-

tion purposes under AS 23.30.105. It also complies with the Supreme Court's directive 14 years ago in Williams v. Safeway Stores, 525 P.2d 1087, 1089 n.6 (Alaska 1974), that the legislature clarify when compensation includes medical and other benefits and when it means time loss benefits only. For the purposes of filing a claim for additional disability compensation, the board has consistently concluded that when compensation payments have been made without an award, the claim must be filed within two years after the last payment of disability or death benefits and cannot be extended by the payment of medical benefits only.

Section 15. This section shifts the burden of proof to the employee for establishing a compensable claim for mental injury resulting from work-related stress, consistent with the amendment to AS 23.30.165(17) found in section 32.

Section 16. This new subsection enforces findings by the Board to be conclusive if supported by any evidence. This is a message to the higher courts.

Section 17. This section codifies the board's interpretation of the meaning of compensation for statute of limitations purposes under AS 23.30.130, which provides that a request for modification of a compensation award must be made within one year after the last payment of disability or death benefits. This is consistent with the amendment to AS 23.30.105 found in section 14.

Section 18. This section reflects changes consistent with the repeal and reenactment of AS 23.30.155(m) found in section 20, concerning the reduction of reporting penalties.

Section 19. This section was amended to assure that an employee continues to receive benefits if his/her claim is controverted solely on the grounds that one or more employer is liable. We were concerned about cases where an employee had a legitimate claim but was not receiving benefits because two insurers were fighting over who should pay. We have added a penalty in the form of attorney's fees and costs and interest as a further disincentive.

Section 20. This section repeals and reenacts employer/insurer reporting provisions requiring that an annual, instead of an anniversary, report be filed with the board by March 1 of each year showing the total

amount of all compensation by type, medical and related benefits, vocational rehabilitation expenses, legal fees, and penalties paid on all claims during the preceding calendar year. Currently, data is collected on a per claim basis through interim and claim anniversary reports. However, there is no data collected showing what employers/insurers have paid for claims on an annual basis, making it impossible to meaningful analyze insurance rates or to make effective changes in the workers' compensation system.

Also, it is the purpose of this section to encourage compliance with the reporting system by assessing full penalties against employers/insurers who repeatedly fail to comply with reporting requirements, but forgiving the occasional reporting oversight for insurers showing substantial compliance.

Because of the insurers' past reporting record, we will also be recommending changes that will include a penalty provision for failure to file an annual report.

Section 21. The intent here is to limit the weekly compensation rate for recipients residing inside or outside the state to a maximum of $700. The bill unfortunately doesn't address the maximum "outside the state" and needs to be corrected. It also allows for an employee who can document wages to receive a minimum of the lesser of his spendable weekly wage or $154 per week. An employee who does not document his wages will receive no less than $110 per week.

In Part B of Section 21 the weekly rate of compensation is adjusted based upon the cost of living of the locality in which the recipient resides compared to the cost of living of the State of Alaska. This section addresses the constitutionality under Alaska Pacific Assurance Co. v. Brown, 687 P.2d 264 (Alaska 1984). It allows the Board the opportunity to pick what shall be used as the standard for cost of living indexes.

Four corrections that need to be made in this section are deletion of the statement "for a recipient residing in the state" at line 29, and insert "average" before cost of living in lines 20 and 21 on page 19, and line 5 on page 20. Substitute the term "gross" for average and "earnings" for wage in line 25 and "are" for is in line 26.

Section 22. This section was amended to conform AS 23.30.041's definition of a labor market and to broaden the market for the employee's service in determining permanent total disability.

Section 23. This is a new section that further clarifies that a failure to satisfy the remunerative employability definition as a wage goal as defined in AS 23.30.041 does not mean that an employee is automatically permanently totally disabled.

Section 24. This section defines when permanent impairment benefits begin. In no case will temporary total disability benefits be paid beyond the date of medical stability, and temporary total disability benefits may not be paid for more than two years regardless of the continuance of the disability. Our intent here was to disallow the continuance of temporary total disability benefits as it is under the current system and also to conform with the limitation as provided in AS 23.30.041 where a reemployment plan may not exceed two years.

Section 25. This section was repealed and reenacted. In this section permanent partial impairment payments are based upon the "whole man" concept as set out in the American Medical Association's Guides to the Evaluation of Permanent Impairment. Compensation paid to claimants under this section is based upon total disability of $240,000 multiplied by the claimant's percentage of net permanent impairment. Impairment levels below 30% are further adjusted by a factor less than one, but in no case is the impairment compensation less than $250. The intent of this section was to redistribute benefits so that those employees who have a greater percentage of injury receive awards commensurate with their injuries whereas those with minor injuries receive a proportionately less amount of compensation.

Section 26. This section provides for payment of temporary partial disability benefits only up to the time of medical stability, consistent with the amendment to AS 23.30.185 found in section 24. It also reduces the maximum period for paying temporary partial disability benefits from five to two years.

In the last sentence of this section the statement "unless otherwise provided under AS 23.30.041" should be deleted.

Section 27. This is a new subsection intended to further define what the wage-earning capacity of an injured employee is. It also allows the Board to fix the wage-earning capacity based upon reasonable regard for the nature of the injury, degree of physical impairment, usual employment, and other factors and circumstances.

Section 28. This section was amended to define what will be used to compute the spendable weekly wage of an employee. Specifically, we were addressing several Supreme Court decisions which fixed spendable weekly wage on future earnings. These cases, such as Johnson v. RCA-OMS, 681 P.2d 905 (Alaska 1984), and its progeny, have made the determination of spendable weekly wage impossible because it is based on the predictability of what someone might be making at some future point in time. We intend to clearly base the determination of spendable weekly wage on the employees' past earnings history except under some very specific cases listed in AS 23.30. 220(a)(2) and (3). We believe this change will markedly decrease the amount of litigation over determination of spendable weekly wage.

Section 29. This section is an offset for a future section, section #31, which defines what gross earnings are. This section allows the employer to offset those contributions made to a qualified pension or profit sharing plan that have in fact been paid or are payable to an injured worker under the plan for any week or weeks during which compensation benefits are also available.

Section 30. This section addresses and prohibits discrimination by an employer in hiring, promoting, or firing an employee just because they have filed a workers' compensation claim. This does not prevent an employer from basing his hiring, firing, or promotion practices or policies on the consideration of safety and safe practices. It also allows the employer to require a prospective employee to fill out a pre-employment questionnaire and to use that questionnaire as documentation for the Second Injury Fund or to determine if the employee has the physical or medical capacity to meet the documented physical or medical demands of a particular job.

Section 31. This section amends the definition of employee gross earnings to include total contributions by an employer to a qualified pension or profit sharing plan for the two prior years multiplied by the

percentage of vested interest at the time of injury. This change is consistent with the board's interpretation of the Supreme Court's ruling in Ragland v. Morrison-Knudsen Co., Inc., 724 P.2d 579 (Alaska 1986).

Section 32. This section amends the definition of injury by providing specific language concerning mental injury caused by mental stress. This section is meant to address the ever increasing possibility of stress-related workers' compensation claims. Such a claim is Wade v. Anchorage School District, 741 P.2d 634 (Alaska 1987). In the Wade case the employee perceived that work stress caused him to have a mental injury and therefore he was injured. Under this amendment work stress does not cause a mental injury unless the work stress was extraordinary and unusual in the profession and a predominant cause. The burden, unlike other injuries, is placed on the employee to prove the mental injury is work connected.

Section 33. This section adds a new paragraph to define what is meant by medical stability. This is consistent with changes made in Sections 6, 24, and 26. This is in direct opposition to current legislation where temporary disability benefits are paid until employment or release for employment regardless of medical stability.

Section 34. This section repeals provisions that are unnecessary or inconsistent with the repeal and reenactment of AS 23.30.200(b) found in section 27.

Section 35. This section is an administrative section amended to require employers to file a annual rather than an anniversary report. The purpose of this section was to allow us to have future opportunity to have correct and complete reporting information which we have not had in the past.

Section 36. This section specifically mandates that only future injuries sustained after July 1, 1988 will come under the jurisdiction of this proposed legislation. This legislation will not be considered retrospective in any way except for the changes in reporting requirements. (See Sections 5, 18, 20 and 35).

Section 37. This section provides that the Act takes effect July 1, 1988.

It may be necessary to change the effective date for some section of this bill.

WCCA

Worker's Compensation Committee of Alaska, Inc., 11401 Olive, Anchorage, AK 99515

Rep. Dave Donley and Sen. Tim Kelly
House and Senate Labor and Commerce Committee Chairs
Juneau, Ak.

Gentlemen:

I want to take this opportunity to thank you both for the tremendous support you two have shown in the recent months and reiterate our support for the task force. I have been asked many times whether the WCCA would have a separate agenda for the session. The answer is emphatically, no.

The efforts of the very best people we could find in Alaska from the ranks of management and organized labor have contributed to our effort. The WCCA believes that effort has produced an impressively thorough, first look at the major cost components of the Alaska worker's compensation system.

In our legislation you will find answers to the problems of soaring unregulated medical costs, unrealistic Alaska benefits and the failure of private vocational rehabilitation. It attempts to look at the history and the future of worker's compensation in Alaska in addressing the intent of the law and the new frontier of claims -- stress. Underlying all of the features of this bill is the effort to reduce the needless dispute and litigation that seems to haunt the system. But perhaps its most redeeming quality is that it represents the thoughts, hard work and aspirations of the two most important parties in the system: those who pay and those who benefit.

We were warned we should not leave the bill at the doorstep of State agencies. We took that message to heart and produced a piece of legislation without a single fiscal note attached that will significantly reduce the cost of worker's compensation insurance for all Alaska employers.

My constituency anxiously awaits the outcome of your efforts in Juneau and trusts you will help us honor the agreement between labor and management that produced this extraordinary document.

Sincerely,

Steve Haag

Article 2. Payment of Wages.

Sec. 23.10.040. Payment of wages in state. (a) An employer of labor performing services in this state shall pay the wages or other compensation for the services with lawful money of the United States or with negotiable checks, drafts or orders payable upon presentation without discount by a bank or depository inside the state.

(b) *[Repealed, § 2 ch 28 SLA 1971.]*

(c) *[Repealed, § 2 ch 28 SLA 1971.]*

(d) A person who violates a provision of this section is guilty of a misdemeanor. (§ 43-2-12 ACLA 1949; am § 1 ch 35 SLA 1967; am §§ 1, 2 ch 28 SLA 1971)

Cross references. — For sentences for misdemeanors, see AS 12.55.135.

Collateral references. — 48A Am. Jur. 2d, Labor and Labor Relations, § 2584. 53 Am. Jur. 2d, Master and Servant, § 82. 51B C.J.S., Labor Relations, § 1179. 56 C.J.S., Master and Servant, §§ 120, 121.

Sec. 23.10.043. Deposit of wages. An employer may not deposit wages due or to become due or an advance on wages to be earned in an account in a bank, savings and loan association or credit union unless the employee has voluntarily authorized the deposit. All deposits under this section shall be in a bank, savings and loan association or credit union of the employee's choice. (§ 1 ch 120 SLA 1976)

Revisor's notes. — Enacted as AS 23.10.040(e). Renumbered in 1976.

Sec. 23.10.045. Payments into benefit fund. (a) If an employer agrees with an employee to make payments to a fund for the benefit of the employees, including but not limited to a fund for medical, health, hospital, welfare and pension benefits or any of them, or has entered into a collective bargaining agreement providing for these payments, the employer may not without just cause fail to make the payments required by the terms of the agreement.

(b) Each violation of this section is a separate offense and a person found guilty of a violation is punishable in accordance with the schedule of punishment set out in AS 23.10.415. (§ 43-2-13 ACLA 1949; added by § 1 ch 23 SLA 1957; am § 1 ch 111 SLA 1959; am § 10 ch 2 SLA 1964)

Sec. 23.10.047. Employee's lien. (a) If an employer agrees with an employee or group of employees to make payment to a medical, health, hospital, welfare, or pension fund or such other fund for the benefit of

ed the use of special limiting standards in determining mental stress claims. We specifically examined and rejected the "greater than all employees must experience" test; we also rejected "any other additional 'objective' threshold requirement." [5] *Id.* at 982. We rejected the "honest perception" test proposed by Fox, by which the mental disability would be compensable if the employee honestly, even if mistakenly, perceived that job stress caused the disability. *Id.* at 983.

The board found that Wade's evidence established a presumption of compensability, but that the ASD rebutted the presumption. The board then held that Wade failed to prove compensability because he failed to show that he experienced greater stress than was usual in the profession. The board also rejected Wade's expert testimony, which established that his work stress was a significant factor in his disability, because it was based on Wade's inaccurate perceptions of his work environment. This case thus raises two issues not clearly resolved by *Fox*: (1) can the "unusual stress in the profession" test be used to evaluate a stress claim once the presumption of compensability has been established; and (2) can the board reject expert testimony that a claimant's mental injury is related to job stress if the experts have no independent knowledge of the actual circumstances of the claimant's job?

1. Rejection of the "unusual stress in the profession" test

[1] In *Delaney v. Alaska Airlines*, 693 P.2d at 864, we rejected an airline pilot's claim that job stress aggravated his preexisting physical condition (Crohn's disease) resulting in his disability. One reason we gave for denying the claim was that Delaney "was a 'usual' pilot and not subject to 'unusual' stress not shared by others in his profession." *Id.* *Fox* expressly rejected this "greater than all employees must experience" test and other objective threshold requirements for mental injury claims. 718 P.2d at 982. In *Fox*, we explained that the *Delaney* decision was based upon the employer's unequivocal expert testimony that job stress was not a factor in producing Delaney's disability. *Id.* at 983.

In this case, the board used the "unusual stress in the profession" test as the sole criterion for its determination that the ASD rebutted Wade's presumption of compensability. Furthermore, it was the most important criterion for the board's decision that Wade had failed to meet his burden of proving compensability. Insofar as the "unusual stress in the profession" test is dispositive of a stress claim, it is a "threshold" requirement and is precluded by *Fox*. Therefore, we must reverse the board's decision that Wade's mental injury was not substantially related to his job stress.

Unusual stress in the profession may be relevant to determining whether a stress disability suffered by an employee was job related. An employee who experienced greater stress on the job than his colleagues, and suffered a stress-related injury, may use evidence of this comparison as part of his proof that the stress was job related. However, the fact that an employ-

must bear the burden of proof as to each element of the claim. *Delaney*, 693 P.2d at 862; *see* AS 23.30.120(1) ("In a proceeding for the enforcement of a claim for compensation under this chapter it is presumed, in the absence of substantial evidence to the contrary, that (1) the claim comes within the provisions of this chapter ...").

5. The "greater than all employees must experience" test compares the stress experienced by a claimant to that experienced by other employees generally. *Fox*, 718 P.2d at 981–83; *see School Dist. No. 1 v. Dep't of Industry, Labor and Human Relations*, 62 Wis.2d 370, 215 N.W.2d 373, 377 (1974). Thus, a librarian, whose job is generally low in stress, may find it difficult to establish a stress injury, while a highly stressed executive may have an easier time establishing such an injury. Another test for job related stress may be called the "unusual stress in the profession test." This test compares the stress experienced by the claimant to that experienced by others in the same profession. *E.g.*, *Sloss v. Industrial Comm'n*, 121 Ariz. 10, 588 P.2d 303, 305 (1978). This test would deny benefits to an "eggshell" claimant in a stressful job, apparently on the theory that he assumed the risk of the stress when he took the job. *See* Sersland, Mental Disability Caused by Mental Stress: Standard of Proof in Worker's Compensation Cases, 33 Drake L.Rev. 751, 775–79 (1983–84).

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ee did *not* suffer greater than usual stress on the job is of limited value in determining that the employee's stress was not job related. An employer cannot dismiss one employee's response to job stress because other employees in the field do not become disabled in response to identical stress. The employer must take the employee "as he finds him." *Fox*, 718 P.2d at 982; *S.L.W. v. Alaska Workers' Compensation Board*, 490 P.2d 42, 44 (Alaska 1971); *Wilson v. Erickson*, 477 P.2d 998, 1000 (Alaska 1970). We will not preclude "eggshell" claimants, like Wade, from recovery in workers' compensation solely because they succumb to stressful job conditions to which others in the profession do not succumb. *See Fox*, 718 P.2d at 982. We would not preclude a worker from recovery in workers' compensation for an injury received in a fall although other more hardy workers would not have suffered from the same fall. To the extent that *Delaney* suggests otherwise, it is disapproved. We conclude that the board erred in relying on evidence that Wade did not experience unusual stress not experienced by other school security guards.

2. Evaluating expert testimony on the impact of job-related stress

[2] In determining that Wade failed to prove that his stress disability was job-related, the board rejected Wade's medical experts' testimony that his job stress was a major factor in Wade's disability. This testimony must be "given less weight," the board held, because it was based on Wade's "faulty perceptions" about his job environment. Although Wade disputed it, the board had substantial evidence from which it could conclude that Wade's illness resulted in his misperceiving the reality of various events at school. The testimony of Wade's own experts confirmed that he was psychotic and delusional. Depositions of his co-workers at Wendler contradicted Wade's allegations of a number of incidents. It is also clear that Wade's psychotherapists did not independently verify Wade's stories about the events he claimed to have experienced at work.

The psychotherapists agreed, however, that Wade's mental problem was significantly related to his employment. The ASD did not introduce any contradictory medical testimony, nor did its cross-examination lead Wade's experts to equivocate on this issue.

In *Fox*, we held that a mentally disabled employee's honest perception that her disability resulted from job-related stress was not dispositive on that issue. 718 P.2d at 983. We rejected the holding of *Deziel v. Difco Laboratories, Inc.*, 403 Mich. 1, 268 N.W.2d 1, 12–13 (1978), in which the Michigan court adopted this "honest perception test" because psychoneuroses were by definition subjective injuries existing only in the minds of the victims. *Fox* did not hold, however, that honest perceptions were entirely immaterial to the issue. We noted that "[a] test that focuses *exclusively* upon the employee's honest perception ignores the statutory directive [that the injury arise out of employment] because it does not ask whether the mental injury arose from an employment related risk *nor does it even look to whether an employee's subjective reaction to work stresses actually contributed to the injury.*" 718 P.2d at 983 (emphasis added).

If the board were to reject expert psychotherapist testimony on the relationship between an employee's mental injury and his job-related stress solely because the psychotherapist based his opinion on this issue *in part* on the unverified and incorrect statements of the employee, a psychotic individual might never be able to prove that his employment contributed to his psychosis. A psychotic, by definition, misperceives objective reality.[6] Wade's psychotherapists did not accept all his assertions about his job as true, but nevertheless attributed a significant amount of his debilitating stress to his job.

6. *See*, T. Stedman, *Stedman's Medical Dictionary* 1166 (5th ed. 1982) (defining psychosis). This paradox was implicit in ASD's counsel's question to Dr. Ohlson, "Well, if people are really out to get him then Mr. Wade is quite accurate in his perception, he's not ill."

BURGESS CONSTRUCTION CO. and Employers Commercial Union Companies, Appellants,

v.

Jeanne L. LINDLEY, as the Beneficiary of Ronald Lindley, Deceased, and the Alaska Workmen's Compensation Board, Appellees.

No. 1705.

Supreme Court of Alaska.

Dec. 22, 1972.

Workmen's compensation proceeding seeking death benefits. The Compensation Board found that claimant was the surviving wife, and employer and insurance carrier sought judicial review. The Superior Court, First Judicial District, Ketchikan, Hubert A. Gilbert, J., affirmed and employer and carrier appealed. The Supreme Court, Boochever, J., held that where first wife had obtained divorce from workman and had been awarded alimony, first wife had not remarried but had resumed living together with workman following his subsequent marriages and divorces and was living with him at time of industrial accident causing his death, although they had never gone through another formal marriage ceremony, first wife was entitled to death benefits under workmen's compensation statute as the surviving wife; first wife qualified as both the surviving wife and the widow.

Affirmed.

Erwin, J., concurred and filed opinion.

1. Workmen's Compensation ⇐433

Where first wife had obtained divorce from workman and had been awarded alimony, first wife had not remarried but had resumed living together with workman following his subsequent marriages and divorces and was living with him at time of industrial accident causing his death, although they had never gone through another formal marriage ceremony, first wife was entitled to death benefits under workmen's compensation statute as the surviving wife; first wife qualified as both the surviving wife and the widow. AS 23.30.005 et seq., 23.30.215(a), 23.30.265(15, 21), 25.05.011, 25.05.011(b).

2. Workmen's Compensation ⇐11

Purpose of the Workmen's Compensation Act is one of liberal humanitarianism.

Peter R. Ellis, Ketchikan, for appellants.

John E. Havelock, Atty. Gen., Michael R. Peterson, Asst. Atty. Gen., Juneau, for appellees.

Before RABINOWITZ, C. J., and CONNOR, ERWIN and BOOCHEVER, JJ.

OPINION

BOOCHEVER, Justice.

This is an appeal by Burgess Construction Company and Employers Commercial Union Companies, the employer and insurance carrier for the deceased workman, from the judgment of the superior court affirming the decision of the Alaska Workmen's Compensation Board that appellee was a surviving wife entitled to compensation benefits for the death of her husband in a job-related accident.

Appellee, Jeanne L. Lindley, was legally married to deceased in 1951 and had four children. In 1967, appellee obtained a divorce from Ronald Lindley and was awarded $75 per month in alimony. Appellee never remarried between her divorce and the death of Ronald Lindley. Ronald Lindley, subsequent to his divorce from appellee, remarried twice, and was divorced from each of these subsequent wives. In 1968, Jeanne and Ronald resumed living together but never went through another formal marriage ceremony. Appellee testified at the hearing that the only reason they did not marry again was because of financial inability to go outside of Ketchikan for a ceremony and the embarrassment that a ceremony in Ketchikan would cause their children and friends who were under the impression that they had in fact remar-

ried. The couple lived together until the death of Ronald Lindley on December 10, 1970.

Appellants do not contest the fact of the accident or its job connection. They further concede the payment of benefits to the minor children. Their sole argument on appeal is that under AS 25.05.011 [1] appellee was not legally married to deceased at the time of his death; and that therefore, appellee was not entitled to benfits under the workmen's compensation statutes as a "surviving wife".

The workmen's compensation statute in question specifically provided: [2]

> *Compensation for Death.* (a) If the injury causes death, the compensation is known as a death benefit and is payable in the following amounts to or for the benefit of the following persons:
>
> . . . . . .
>
> (2) if there is a surviving wife or dependent husband, to the surviving wife or dependent husband 35 per cent of the average weekly wages of the deceased, during widowhood, or widowerhood with $10,000 in one sum upon remarriage, but total compensation not to exceed $20,000 in the aggregate; if there is a surviving child or children of the deceased, the additional amount of 15 per cent of the average weekly wages for each child not to exceed 30 per cent of the average weekly wages, but the total amount payable to a widow or widower and children may in no case exceed 65 per cent of the average weekly wages, except as provided in (b) of this section; . . .

No definition of the term "surviving wife" is provided by the workmen's compensation statute but the terms "married" and "widow" are defined by the Act. AS 23.30.265(15) provides

> "married" includes a person who is divorced but is required by the decree of divorce to contribute to the support of his former wife; . . . AS 23.30.265(21) provides
>
> "widow" includes only the decedent's wife living with or dependent for support upon him at the time of his death, or living apart for justifiable cause or by reason of his desertion at such a time; . . .

[1,2] It is clear under the statutory definition of "married" that the decedent, though divorced, was "married" for the purpose of the Workmen's Compensation Act, for the divorce decree required him to contribute to appellee's support. It follows that under the Act appellee would be regarded as his "surviving wife". She qualifies as a "widow" for she was living with decedent at the time of his death and was dependent upon him for support.[3]

Under the marital and domestic relations laws of the State of Alaska "[n]o person may be joined in marriage in this state until a license has been obtained for that purpose as provided in this chapter. No marriage performed in this state is valid without solemnization as provided in this chapter." [4] We have held that common law marriages are thus not valid in Alaska.[5] The subject case involves similar contentions to those ruled upon by the

1. AS 25.05.011 provides:
   Civil Contract. (a) Marriage is a civil contract requiring both a license and solemnization which may be entered into by
   (1) a male who is 19 years of age or older with a female who is 18 years of age or older, who are otherwise capable, or
   (2) those who qualify for a license under § 171 of this chapter.
   (b) No person may be joined in marriage in this state until a license has been obtained for that purpose as provided in this chapter. No marriage performed in this state is valid without solemnization as provided in this chapter.
2. AS 23.30.215(a).
3. The appellee, the appellants and the State of Alaska urged us to consider the equal protection argument which would result from the denial of benefits to a common law wife in such circumstances but we decline to consider this question at this time.
4. AS 25.05.011(b).
5. Edwards v. Franke, 364 P.2d 60, 63 (Alaska 1961).

United States Court of Appeals for the Ninth Circuit in Albina Engine & Machine Works v. O'Leary [6] wherein the court stated:

> Neither the Oregon Workmen's Compensation Act nor the Longshoremen's and Harbor Workers' Act relate to or affect the marriage relationship as such. And the laws of the state regarding marriage are only tangentially relevant as they may bear upon the existence of the status of "wife" or "widow" for the purpose of identifying recipients of benefits under these remedial statutes.
>
> The application of state domestic relations law, developed in other contexts, to the solution of problems under workmen's compensation statutes, produces results which at best have only a fortuitous relation to the remedial purposes of the compensation acts, and often are in direct conflict with them. When the state law does provide a definition of marital status deliberately shaped to compensation act purposes alone, there is no reason why that definition should not be applied under the federal statute in preference to one drawn from the state's general domestic relations law.

The *Albina* case is discussed in Holland America Insurance Company v. Rogers, 313 F.Supp. 314, 320 (N.D.Cal.1970) as follows:

> The *Albina* case reiterates the accepted approach to dealing with problems of marital relations: that marriage is not a monolithic institution, but consists instead of separate and severable incidents. Thus where the policy of a state may preclude its courts from "recognizing", say, a marriage of one man to two women, it may be permissible for both women to recover property from his estate on his death as his "wives", for recognizing a marriage for the purposes of the one incident would not violate the state's public policy as might recognition of it for other purposes. Similarly, in the instant case, this Court need not "recognize" the marriage of Angela Spies to Julian Spies in order to find that she is nonetheless entitled to at least some of the incidents of marriage, including the right to collect death benefits under a federal workmen's compensation law upon his death.

While, for some purposes, appellee would not have been recognized by the Alaska courts as married to the decedent, appellee qualifies for benefits as a "surviving wife" under terms of the Alaska Workmen's Compensation Act discussed above. The grant of benefits by the workmen's Compensation Board under the facts of this case is within the liberal humanitarian purposes of the Act [7] while a different reading of the statute would clearly frustrate this purpose.

The decision of the superior court is affirmed.

ERWIN, Justice (concurring).

While I readily concur in the result in this case, I cannot accept the supporting reasoning used by the majority. It is clear to me that the plain reading of the definitions found in AS 23.30.265(15) and (21) must exclude benefits for appellee, who can only be characterized as a common law wife after her divorce from the deceased and his remarriage. The workmen's compensation statute granting benefits to a "surviving wife" obviously refers to a legal wife as defined in Alaska statutes (AS 25.05.011(b)).[1] While the rather strained in-

6. 328 F.2d 877, 879 (1964).

7. Gordon v. Burgess Constr. Co., 425 P.2d 602, 605 (Alaska 1967); Holland America Ins. Co. v. Rogers, 313 F.Supp. 314, 320 (N.D.Cal. 1970).

1. AS 25.05.011(b) provides:
> (b) No person may be joined in marriage in this state until a license has been obtained for that purpose as provided in this chapter. No marriage performed in this state is valid without solemnization as provided in this chapter.

terpretation of the majority avoids ruling on the constitutional problem, it will create problems of statutory interpretation at a later date. Therefore, I feel it is incumbent on this court to decide the central issue in this case.

I find the statutory grant of workmen's compensation benefits to a legal wife and not a common law wife is a violation of Article I, § 1 of the Alaska Constitution, which guarantees all persons equal protection under the law. Such a classification constitutes impermissible discrimination for it would deny benefits under AS 23.30.-215(a)(2) solely because a "spouse" did not go through a formal marriage ceremony.[2]

In a recent decision, the United States Supreme Court stated, in voiding a Louisiana Workmen's Compensation statutory scheme providing for different benefits for legitimate and illegitimate children, that:

> The tests to determine the validity of state statutes under the Equal Protection Clause have been variously expressed, but this Court requires, at a minimum, that a statutory classification bear some rational relationship to a legitimate state purpose.[3]

The Supreme Court then reached the conclusion that the denial of Workmen's Compensation Benefits to an illegitimate child did not protect legitimate family relationships, but served to unjustly penalize those not guilty of wrongdoing. An analogous situation is presented in the case at bar. I can find no reasonable relationship between the legal formality of a marriage ceremony and the purpose of the Alaska Workmen's Compensation Act which compensates a dependent "spouse" for the death of a provider.[4]

Further, Alaska's prohibition against common law marriage is phrased solely in terms of marriages contracted within the state.[5] Presumably, this Court would adhere to the conflicts of law principle that the validity of a marriage is determined by the law of the place where contracted.[6] This would mean that common law marriages contracted in Alaska would not be recognized, but such marriages contracted outside the state and maintained within Alaska would be recognized and compensation benefits granted to a common law spouse. This would, in effect, permit a certain category of common law wives to recover benefits, but deny benefits to another category, thus constituting impermissible discrimination.

I would affirm the decision of the superior court on the basis that common law wives are entitled to benefits as a "surviving wife" under the Alaska Workmen's Compensation act.[7]

2. In this case approximately four years elapsed since the time the parties were divorced and resumed living together with their children. Problems of duration of common law marriage are obviously not present herein.

3. Weber v. Aetna Casualty and Surety Co., 406 U.S. 164, 92 S.Ct. 1400, 31 L.Ed.2d 768 (1972); *See also* Levy v. Louisiana, 391 U.S. 68, 88 S.Ct. 1509, 20 L.Ed.2d 436 (1968); Glona v. American Guarantee and Liability Insurance Company, 391 U.S. 73, 88 S.Ct. 1515, 20 L.Ed.2d 441 (1963).

4. Appellee concedes that appellant was dependent on the deceased for support at the time of his death.

5. AS 25.05.011(b).

6. *E. g.*, Loughran v. Loughran, 292 U.S. 216, 54 S.Ct. 684, 78 L.Ed. 1219 (1934).

7. The proposition that the wording of AS 23.30.265(15) and (21) as written denied appellee equal protection renders unconstitutional only those sections. It is settled federal law that while a statute may be unconstitutional in part, the portion which is constitutional may stand. E. g., Chapinsky v. New Hampshire, 315 U.S. 568, 62 S.Ct. 766, 86 L.Ed. 1031 (1942). Alaska Statute 01.10.030 provides that "Any law . . . which lacks a severability clause shall be construed as though it contained the clause . . . ."

Joyce Gail GORDON, Administratrix of the Estate of Timothy Taylor Gordon, Deceased, Appellant,

v.

BURGESS CONSTRUCTION COMPANY, an Alaska corporation et al., Appellee.

No. 716.

Supreme Court of Alaska.

April 3, 1967.

Action by employee's administratrix against employer under Defective Machinery Act for death of employee. The Superior Court, Fourth Judicial District, Everett W. Hepp, J., dismissed the complaint. The administratrix of the estate appealed. The Supreme Court, Nesbett, C. J., held that remedies intended by Workmen's Compensation Act were to be in lieu of all rights and remedies as to particular injury whether at common law or otherwise and administratrix of employee who was killed while allegedly working with defective machinery provided by his employer covered by the Workmen's Compensation Act could not maintain an action against employer under Defective Machinery Act.

Order affirmed.

1. Statutes ⇐223.1

Where reasonable construction of statute can be adopted which realizes legislative intent and avoids conflict or inconsistency with another statute this should be done.

2. Workmen's Compensation ⇐2089

Although coverage provided by Defective Machinery Act has been reduced by Workmen's Compensation Act, Defective Machinery Act is still applicable to all classes of employees not covered by the Workmen's Compensation Act. AS 23.25.010–23.25.040, 23.30.230.

3. Workmen's Compensation ⇐2084, 2092

Remedies of Workmen's Compensation Act were intended to be in lieu of all rights and remedies as to particular injury whether at common law or otherwise, and administratrix of employee who was killed while allegedly working with defective machinery provided by his employer covered by the Workmen's Compensation Act, which provides exclusive remedy, could not maintain action against employer under Defective Machinery Act. AS 23.25.010–23.25.040, 23.30.055, 23.30.230.

4. Statutes ⇐147
Workmen's Compensation ⇐2092

Compiling, codifying or revising are not the same as repealing and re-enacting, and fact that Defective Machinery Act continued to be compiled and codified after Workmen's Compensation Act was enacted did not support view that Legislature intended to exclude defective and dangerous machinery from Workmen's Compensation Act, provision of exclusive remedy. AS 23.25.010–23.25.040, 23.30.230.

Robert A. Parrish, Fairbanks, for appellant.

George M. Yeager and David H. Call, Fairbanks, for appellee, Howard Staley, of Merdes, Schaible, Staley & DeLisio, Fairbanks, filed a brief in support of appellee's legal position.

OPINION

Before NESBETT, C. J., RABINOWITZ, J., and SANDERS, Superior Court Judge.

NESBETT, Chief Justice.

The question presented is whether the scope of employer coverage originally provided by the Defective Machinery Act has been retained, separate from and undiminished by the coverage provided by the later enacted Workmen's Compensation Act, or whether its coverage has been correspondingly reduced by each extension of coverage given to the Compensation Act, during the fifty years of their coexistence.

In 1913, the Alaska Territorial Legislature enacted the Defective Machinery Act which made any person engaged in manu-

facturing, mining, constructing, building, or other business or occupation carried on by means of machinery or mechanical appliances liable to an employee for all damages resulting from the negligence of any of the employer's officers, agents, or employees, or by reason of defect or insufficiency "due to the employer's negligence in the machinery, appliances and works." [1] The act also provided that the contributory negligence of the employee was no bar to recovery where his contributory negligence was slight and the negligence of the employer was gross in comparison, but that the damages awarded should be reduced in proportion to the amount of negligence attributable to the employee.[2]

This act has not been amended in any significant manner during the fifty-three years of its existence and is presently codified in the Alaska Statutes as above noted.

In 1915, two years after enactment of the Defective Machinery Act, the Alaska Territorial Legislature enacted Alaska's first Workmen's Compensation Act.[3] This act covered only employers in the mining industry who employed five or more persons and who had not elected to reject the provisions of the act. It also provided that the remedy granted therein was exclusive.

The Workmen's Compensation Act has been amended approximately twenty-nine times in the fifty years preceding the commencement of this suit. Its coverage of employers and occupations has been gradually extended. Since its enactment it has always provided that the remedies provided therein were exclusive. Those amendments considered to be most pertinent to the issues of this case are mentioned in the following paragraphs.

SLA 1923, chapter 98 extended the coverage to include all employers of five or more employees in connection with any business, occupation, work, employment or industry *except* domestic service, agriculture, dairying, or the operation of railroads as common carriers.

SLA 1946, chapter 9 extended the employers included to those employing three or more employees, but retained the group of "excepted" employers mentioned in the 1923 amendment above. This amendment also provided that failure of the employer to secure his liability under the act permitted the injured employee to elect to claim compensation under the act, or to maintain an action for damages. Furthermore, where the employee elected to sue for damages, the employer could not assert the common law defenses of the fellow-servant rule, assumption of risk, or contributory negligence.

SLA 1953, chapter 60 extended coverage to all employers of one or more employees, excepting employers in domestic service, agriculture, dairying, or in the operation of railroads as common carriers.

SLA 1959, chapter 193 repealed the Workmen's Compensation Act in its en-

1. This act is now AS 23.25.010–040. AS 23.25.010 states:

   A person engaged in manufacturing, mining, constructing, building, or other business or occupation carried on by means of machinery or mechanical appliances is liable to an employee or, in the event of his death, to his personal representative for the benefit of his widow and children, if any, or if none, then for his parents, or, if neither widow, nor children nor parents, then for his next of kin dependent upon him, for all damages which may result from the negligence of any of the employer's officers, agents, or employees, or by reason of defect or insufficiency due to the employer's negligence in the machinery, appliances and works.

2. AS 23.25.020 states:

   In an action against a master or employer under § 10 of this chapter the fact that the employee may have been guilty of contributory negligence does not bar a recovery where his contributory negligence was slight and the negligence of the employer was gross in comparison, but the damages shall be diminished by the jury in proportion to the amount of negligence attributable to the employee. All questions of negligence and contributory negligence are for the jury.

3. SLA 1915, ch. 71.

tirety and enacted a new Workmen's Compensation Act patterned after the Federal Longshoremen's and Harbor Workers' Compensation Act. The new act excluded from coverage "Part time baby sitters, cleaning persons, harvest help and similar part time or transient help."[4] These same exclusions are contained in the present act.[5] Also excluded by the present act are executive officers of municipal, charitable, religious, educational, or any other non-profit corporations, who have not been brought within the coverage by the election of their employer corporations and executive officers of private business corporations who have waived coverage under the act.[6]

Since its reenactment in 1959 the Workmen's Compensation Act has provided that the liability of an employer under the act "shall be exclusive and in place of all other liability of such employer."[7] Previously the act had always provided that the remedy was "in lieu of all rights and remedies as to such injury now existing either at common law or otherwise."

The complaint filed by appellant alleged that decedent met his death while working with defective machinery provided by his employer, the appellee, whose liability for damages was charged under the Defective Machinery Act. The trial court granted appellee's motion to quash service of summons and dismiss the complaint on the ground that the court did not have jurisdiction since appellant's exclusive remedy was under the Workmen's Compensation Act.

Appellant's theory on appeal is that the Defective Machinery Act provides a cause of action, where defective machinery has been employed, which is separate and apart from the coverage provided by the Workmen's Compensation Act and that the employer may not claim the benefit and protection of the limited liability of the Workmen's Compensation Act.

Appellee argues that employers covered by the Workmen's Compensation Act are exempt from any other liability; that the numerous amendments to the act over the years have extended its coverage and correspondingly narrowed that of the Defective Machinery Act, and that the two acts can and should be construed to be harmonious rather than in conflict.

[1] We are of the opinion that appellee's anaylsis of the proper relationship of the two acts is correct. Where a reasonable construction of a statute can be adopted which realizes the legislative intent and avoids conflict or inconsistency with another statute this should be done.[8]

When the Defective Machinery Act was enacted its coverage was comprehensive. There was no other similar coverage provided by Alaska law. Upon the enactment of the first Workmen's Compensation Act two years later, the coverage provided by the Defective Machinery Act was reduced to the extent that it no longer applied to employers in the mining industry employing five or more persons who had not rejected the provisions of the act. This reduction in coverage resulted from the particular wording of the compensation act, that the liability provided therein was exclusive and "in lieu of all rights and remedies as to such injury now existing either at common law or otherwise."[9] The Defective Machinery Act's application to all other classes of employers was not disturbed.

As each subsequent amendment of the Workmen's Compensation Act extended its coverage, the coverage of the Defective Machinery Act was correspondingly reduced by reason of the provision in the

4. SLA 1959, ch. 193, § 33(3).
5. AS 23.30.230.
6. AS 23.30.240.
7. SLA 1959, ch. 193, § 4. This provision, as amended by SLA 1962, chapter 42, is now the subject matter of AS 23.30.055.
8. See Ziegler v. Witherspoon, 331 Mich. 337, 49 N.W.2d 318 (1951); Brunette v. Bierke, 271 Wis. 190, 72 N.W.2d 702 (1955).
9. SLA 1915, ch. 71, § 7.

Workmen's Compensation Act that the remedies provided therein were exclusive.

[2] After the repeal and reenactment of the Compensation Act in 1959 its coverage was quite broad, yet it excepted and still excepts part time baby sitters, cleaning persons, harvest help, and similar part time or transient help as well as certain classes of corporate executive officers. Although the coverage provided by the Defective Machinery Act has been drastically reduced, it still cannot be said that its application to all classes of employers has been eliminated.[10]

We do not adopt appellant's argument that the Alaska Legislature, by continuing the Defective Machinery Act in existence after enactment of the Workmen's Compensation Act, evidenced its intent to exclude defective, dangerous machinery from the coverage of the Compensation Act in order to coerce employers to furnish safe machinery.

[3] A more logical interpretation of legislative intent, and that subscribed to by most courts, is that the remedies provided by a workmen's compensation act are intended to be in lieu of all rights and remedies as to a particular injury whether at common law or otherwise. The social philosophy responsible for workmen's compensation legislation has been well expressed by Professor Larson as follows:

> The ultimate social philosophy behind compensation liability is belief in the wisdom of providing, in the most efficient, most dignified, and most certain form, financial and medical benefits for the victims of work-connected injuries which an enlightened community would feel obliged to provide in any case in some less satisfactory form * * *.[11]

The court's observation in Frick v. Horton [12] is particularly applicable to the issue before us:

> In substituting certainty of compensation for the hazards of litigation of work-connected injuries, it is too clear to require discussion that the act was intended to comprehend and govern all the interacting relations of employee, fellow employee and employer.

Appellant points out that the Defective Machinery Act was codified into the Compiled Laws of Alaska 1933, the Alaska Compiled Laws Annotated in 1949, and finally into the Alaska Statutes in 1962 where it is presently found. Appellant seems to equate the codification and recodification of the act with repeal and reenactment and appears to imply that somehow this is evidence that the legislature intended that the Defective Machinery Act supply a remedy in this case.

[4] The answer is that the statute compilers and revisors had no authority to add to or eliminate any of the statutes they were required to work with. Compiling, codifying, or revising are not the same as repealing and reenacting. The fact that the Defective Machinery Act survived both codifications and a revision does not lend

10. We attach no controlling significance to the fact that, in reenacting the Workmen's Compensation Act in 1959, the Alaska Legislature substituted the wording of the Longshoremen's and Harbor Workers' Compensation Act with respect to the exclusiveness of the remedy, eliminating the wording "at common law or otherwise" which had theretofore been employed. Both provisions are quoted on page 5 of this opinion. Both provisions had consistently been construed by the courts to mean that the remedies provided were exclusive in fact. E. g., Mellen v. H. B. Hirsh & Sons, 82 U.S.App.D.C. 1, 159 F.2d 461, cert. denied, 331 U.S. 845, 67 S.Ct. 1534, 91 L.Ed. 1855 (1947); Richard v. Fireman's Fund Ins. Co., 384 P.2d 445 (Alaska 1963); Aho v. Chichagoff Mining Co., 6 Alaska 528 (D. Alaska 1922); Johnson v. Kennecott Copper Corp., 5 Alaska 571 (D.Alaska 1916), aff'd, 4 Alaska Fed. 666, 248 F. 407 (9th Cir. 1918); Huff v. Alaskan Lumber & Pulp Co., Civil No. 63-93, Super.Ct. 1st Judicial Dist. Alaska, 1963.

11. 1 Larson, Workmen's Compensation Law § 2.20 at 5 (1960).

12. 21 A.D.2d 212, 250 N.Y.S.2d 83, 85 (1964), aff'd, 15 N.Y.2d 1018, 260 N.Y.S. 2d 26, 207 N.E.2d 618 (1965).

support to the general position appellant has taken.

The order of the trial court dismissing appellant's complaint is affirmed.[13]

Paul Lawrence BATTESE, Appellant,
v.
STATE of Alaska, Appellee.
No. 715.

Supreme Court of Alaska.
April 3, 1967.

Defendant was convicted, in the Superior Court of the State of Alaska, Third Judicial District, James M. Fitzgerald, J., of burglary and attempted larceny, and he appealed. The Supreme Court, Dimond, J., held that even though sentence imposed on 18-year-old defendant was in excess of minimum for burglary not in dwelling, there was no abuse of discretion, since court required him to serve only 60 days in jail and he was placed on probation for balance of three-year sentence.

Affirmed.

1. Criminal Law ⇐599, 629, 1148, 1151

No rule or statute requires state to furnish defendant with names of witnesses to be called at trial but not examined before grand jury; matter of excluding witnesses not known to defendant until time of trial or granting time to defendant for investigation and preparation as to such witnesses is within discretion of trial judge; and his exercise of such discretion will not be interfered with in absence of abuse. Rules of Criminal Procedure, rule 7(c).

2. Criminal Law
⇐599, 629, 867, 1166(8, 11)

Trial judge would not be put in error for failing to grant mistrial or continuance or for not excluding witnesses from testifying where (1) defendant made no request for continuance when prosecuting attorney indicated intention to call witnesses whose names were not endorsed on indictment but who had not been examined before grand jury, (2) no showing of prejudice was made in support of motion for mistrial or for exclusion of witnesses and (3) record on appeal indicated that defendant had not been placed at any serious disadvantage in cross-examination of such witnesses. Rules of Criminal Procedure, rule 7(c).

3. Criminal Law ⇐651(1), 1152(1)

Question of at what stage of trial jury should be permitted to view premises is matter within discretion of trial court and will be reviewed only for abuse of discretion. Rules of Criminal Procedure, rule 27(b).

4. Criminal Law ⇐651(1)

Jury view of premises may be allowed even if conditions have changed, if character of change is properly brought out in evidence. Rules of Criminal Procedure, rule 27(b).

5. Criminal Law ⇐651(1)

It was not error to allow jury to view burglarized premises even though (1) view was made before state established corpus delicti and (2) there had been material changes since burglary took place, where photographs taken before repairs were made and clearly showing hole in ceiling were introduced into evidence. Rules of Criminal Procedure, rule 27(b).

13. Other courts have been confronted with factual situations similar to that of this case. See Gannon v. Chicago, M., St. P. & Pac. Ry., 22 Ill.2d 305, 175 N.E.2d 785 (1961) where the court harmonized the provisions of the Scaffold Act with the later enacted Workmen's Compensation Act and Selby v. Sykes, 189 F.2d 770, 774 (7th Cir. 1951) where the court held that plaintiff's allegations of violation of Indiana's Dangerous Occupation Act did not remove his case from the jurisdiction of Indiana's Workmen's Compensation Act.

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REP. JOHN SUND
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JUNEAU AK 99811

I AM AN ATTORNEY WHO REPRESENTS EMPLOYERS IN WORKERS COMPENSION CLAIMS. RUMOR HAS IT THAT THE HOUSE IS CONSIDERING LEGISLATION WHICH WOULD PROHIBIT MY BEING PAID BY MY CLIENTS WITHOUT THE APPROVAL OF THE WORKERS COMPENSATION BOARD. I STRENOUSLY OBJECT TO THIS PROPOSAL. THE REASON THAT BOARD APPROVAL IS NECESSARY FOR THE ATTORNEYS FEES OF THE EMPLOYEE IS BECAUSE THE FEES ARE BEING PAID BY A THIRD PARTY. MY FEES, ON THE OTHER HAND, ARE PAID DIRECTLY BY THE CLIENT WHO HAS HIRED ME. I CAN ASSURE YOU THAT MY INSURANCE CLIENTS ARE CAPABLE OF BEING QUITE SEVERE IN SCRUTINIZING MY BILLS. MOREOVER, EMPLOYEE AND EMPLOYER ATTORNEY FEES CAN NOT BE FAIRLY COMPARED BECAUSE THE EMPLOYEE HAS THE PRESUMPTION OF COMPENSABILITY. THIS MEANS THAT DOUBLE OR TRIPLE THE WORK IS ROUTINELY REQUIRED BY THE INSURANCE ATTORNEY TO HAVE AN EVEN CHANCE OF HAVING A BALANCED HEARING. I CAN THINK OF NO LEGITIMATE INTERESTS IN SADDLING THE WORKERS COMPENSATION BOARD WITH YET ANOTHER ADMINISTATIVE BURDEN SUCH AS THIS.
BY THE WAY, HAS ANYONE POINTED OUT TO THE HOUSE THE FACT THAT INSURANCE ATTORNEYS ARE LIMITED IN THEIR FEES BY THE NUMBER OF HOURS IN A DAY. CLAIMANTS ATTORNEYS, ON THE OTHER HAND, MAY APPLY FOR ACTUAL ATTORNEYS FEES WHEN CONVENIENT OR THE STATUTORY MINIMUM 10% WHEN CONVENIENT. I HAVE SEEN CLAIMENTS ATTORNEYS MAKE A FIVE THOUSAND DOLLAR FEE ON A FIFTY THOUSAND DOLLAR SETTLEMENT WITH JUST A FEW PHONE CALLS.
JAMES BENDELL, ATTORNEY AT LAW

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State Workers' Compensation Laws

U.S. Department of Labor
Employment Standards Administration
Office of State Liaison and Legislative Analysis
Division of State Workers' Compensation Programs

January 1988

TABLE 8. BENEFITS FOR PERMANENT PARTIAL DISABILITY PROVIDED BY WORKERS' COMPENSATION STATUTES IN THE U.S.

SAWW - State's Average Weekly Wage

Jurisdiction	Percentage of Worker's Wage	Payments Per Week			Maximum Period For Unscheduled Injury	Notes
		Minimum	Maximum	Percentage of SAWW		
Alabama.....	66 2/3	$91 - 27½% of SAWW, or worker's average wage if less, for scheduled injuries.	$220.00*	100	300 weeks	*(By legislation, maximum weekly compensation is capped at $220.) Also see 1/.
Alaska.....	80% of spendable earnings	$110 or worker's spendable weekly wages if less.	$1,094.00	200	Duration of disability	Total maximum amount payable for non-scheduled injury is $60,000. WC benefits are subject to Social Security benefit offsets; and are in addition to compensation for TTD.
Arizona.....	55	Payable, but not statutorily prescribed.	$209.44	N/A	Duration of disability	
Arkansas.....	66 2/3	$20	$154.00	N/A	450 weeks	If the claimant's TTD rate for injury is $25.35 or greater, maximum PPD rate will be 75% of claimant's total disability rate.

1/ Alabama: Section 25-5-57--In case a scheduled permanent partial disability follows or accompanies a period of temporary total disability resulting from the same injury, the period of TTD shall not be deducted from the maximum number of weeks set for such partial disability; in case of non-scheduled PPD, such periods shall be deducted.

TABLE 8. BENEFITS FOR PERMANENT PARTIAL DISABILITY PROVIDED BY WORKERS' COMPENSATION STATUTES IN THE U.S. (cont.)

SAWW - State's Average Weekly Wage

Jurisdiction	Percentage of Worker's Wage	Payments Per Week			Maximum Period For Unscheduled Injury	Notes
		Minimum	Maximum	Percentage of SAWW		
Connecticut..	66 2/3	$128.60 - 20% of SAWW, or an amount not to exceed 80% of worker's average wage if less.	$643.00	150	780 weeks	Benefits are in addition to compensation for TTD.
Delaware....	66 2/3	$83.51 - 22 2/9% of SAWW, or actual wage if less, for scheduled injury.	$250.53	66 2/3	300 weeks	Benefits are in addition to compensation for TTD.
District of Columbia...	66 2/3	----------	$481.92	100	Duration of disability	Benefits are in addition to compensation for TTD.
Florida.....	2/	See 2/	$344.00	100	525 weeks	WC benefits subject to Social Security benefit offsets.

2/ Florida: Section 440.15(3)(b)--Wage loss benefits are based on actual wages lost and are not subject to a minimum. Wage loss is equal to 95% of the difference between 85% of the employee's average monthly wage and the wage employee is able to earn after reaching maximum medical improvement, provided the monthly wage loss benefits shall not exceed 66 2/3% of the employee's average monthly wage at the time of injury.

TABLE 8. BENEFITS FOR PERMANENT PARTIAL DISABILITY PROVIDED BY WORKERS' COMPENSATION STATUTES IN THE U.S. (cont.)

SAWW - State's Average Weekly Wage

Jurisdiction	Percentage of Worker's Wage	Payments Per Week			Maximum Period For Unscheduled Injury	Notes
		Minimum	Maximum	Percentage of SAWW		
Illinois.....	60	$80.90 - $96.90 or worker's average wage if less, according to number of dependents.	$299.15		500 weeks (worker able to pursue usual work duties). Duration of disability (worker unable to pursue usual work duties.)	Maximum WC for amputation of a member or enucleation of an eye is 133 1/3% of SAWW. ($554.27). Benefits are in addition to compensation for TTD. *On July 1, annually, the amount will increase based on the percentage increase of the SAWW.
Indiana.....	60	Payable, but not statutorily prescribed.	$75.00	N/A	500 weeks	
Iowa.....	80% of worker's spendable earnings.	$111.00 - 35% of SAWW, or actual wage if less.	$582.00	184	In proportion to scheduled injuries or in proportion to losses of the whole man based on a maximum of 500 weeks.	

CORRECTION

THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY

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Alaska.....	80% of spendable earnings	$110 or worker's spendable weekly wages if less.	$1,094.00	200	Duration of disability	Total maximum amount payable for non-scheduled injury is $60,000. WC benefits are subject to Social Security benefit offsets; and are in addition to compensation for TTD.
Arizona.....	55	Payable, but not statutorily prescribed.	$209.44	N/A	Duration of disability	
Arkansas.....	66 2/3	$20	$154.00	N/A	450 weeks	If the claimant's TTD rate for injury is $25.35 or greater, maximum PPD rate will be 75% of claimant's total disability rate.

1/ Alabama: Section 25-5-57--In case a scheduled permanent partial disability follows or accompanies a period of temporary total disability resulting from the same injury, the period of TTD shall not be deducted from the maximum number of weeks set for such partial disability; in case of non-scheduled PPD, such periods shall be deducted.

TABLE 8. BENEFITS FOR PERMANENT PARTIAL DISABILITY PROVIDED BY WORKERS' COMPENSATION STATUTES IN THE U.S. (cont.)

SAWW - State's Average Weekly Wage

Jurisdiction	Percentage of Worker's Wage	Payments Per Week			Maximum Period For Unscheduled Injury	Notes
		Minimum	Maximum	Percentage of SAWW		
California..	66 2/3	$70	$140.00	N/A	619.25 weeks (applicable to a worker with a 99.5% disability.)	3 to 8 weeks of WC payable for each 1% of permanent disability, depending on severity. Thereafter, if disability is at least 70%, but not more than 99.75%, a life pension of 1.5% of the employee's weekly earnings will be paid for each 1% of disability over 60% subject to a maximum weekly rate of $116.27.
Colorado....	———	———	$150.00 - scheduled injury $120.00 - non-scheduled injury	N/A	Duration of disability	Benefits are in addition to compensation for TTD. Total maximum amount payable for non-scheduled injury is $37,560. WC benefits subject to Social Security benefit offsets.

TABLE 8. BENEFITS FOR PERMANENT PARTIAL DISABILITY PROVIDED BY WORKERS' COMPENSATION STATUTES IN THE U.S. (cont.)

SAWW - State's Average Weekly Wage

Jurisdiction	Percentage of Worker's Wage	Payments Per Week			Maximum Period For Unscheduled Injury	Notes
		Minimum	Maximum	Percentage of SAWW		
Connecticut..	66 2/3	$128.60 - 20% of SAWW, or an amount not to exceed 80% of worker's average wage if less.	$643.00	150	780 weeks	Benefits are in addition to compensation for TTD.
Delaware....	66 2/3	$83.51 - 22 2/9% of SAWW, or actual wage if less. for scheduled injury.	$250.53	66 2/3	300 weeks	Benefits are in addition to compensation for TTD.
District of Columbia...	66 2/3	----------	$481.92	100	Duration of disability	Benefits are in addition to compensation for TTD.
Florida.....	2/	See 2/	$344.00	100	525 weeks	WC benefits subject to Social Security benefit offsets.

2/ Florida: Section 440.15(3)(b)--Wage loss benefits are based on actual wages lost and are not subject to a minimum. Wage loss is equal to 95% of the difference between 85% of the employee's average monthly wage and the wage employee is able to earn after reaching maximum medical improvement, provided the monthly wage loss benefits shall not exceed 66 2/3% of the employee's average monthly wage at the time of injury.

TABLE 8. BENEFITS FOR PERMANENT PARTIAL DISABILITY PROVIDED BY WORKERS' COMPENSATION STATUTES IN THE U.S. (cont.)

SAWW - State's Average Weekly Wage

Jurisdiction	Percentage of Worker's Wage	Payments Per Week - Minimum	Payments Per Week - Maximum	Payments Per Week - Percentage of SAWW	Maximum Period For Unscheduled Injury	Notes
Georgia.....	66 2/3	$25 or average wage if less.	$175.00	N/A	Based on statutory schedule.	
Hawai'i.....	66 2/3	$83.50 - 25% of SAWW, or worker's average wage if less, but not lower than $38.	$334.00	100	In proportion to scheduled injuries; or a % of loss of the whole man.	Maximum WC for % of disability based on the whole man is the product of 312 times the effective maximum weekly benefit rate.
Idaho.....	-------	----------	$172.70	55	In proportion to losses of the whole man based on a maximum of 500 weeks.	Benefits are in addition to compensation for TTD.

TABLE 8. BENEFITS FOR PERMANENT PARTIAL DISABILITY PROVIDED BY WORKERS' COMPENSATION STATUTES IN THE U.S. (cont.)

SAWW - State's Average Weekly Wage

Jurisdiction	Percentage of Worker's Wage	Payments Per Week			Maximum Period For Unscheduled Injury	Notes
		Minimum	Maximum	Percentage of SAWW		
Illinois.....	60	$80.90 - $96.90 or worker's average wage if less, according to number of dependents.	$299.15		500 weeks (worker able to pursue usual work duties). Duration of disability (worker unable to pursue usual work duties.)	Maximum WC for amputation of a member or enucleation of an eye is 13? 1/3% of SAWW. ($554.27). Benefits are in addition to compensation for TTD. *On July 1, annually, the amount will increase based on the percentage increase of the SAWW.
Indiana.....	60	Payable, but not statutorily prescribed.	$75.00	N/A	500 weeks	
Iowa.....	80% of worker's spendable earnings.	$111.00 - 35% of SAWW, or actual wage if less.	$582.00	184	In proportion to scheduled injuries or in proportion to losses of the whole man based on a maximum of 500 weeks.	

TABLE 8. BENEFITS FOR PERMANENT PARTIAL DISABILITY PROVIDED BY WORKERS' COMPENSATION STATUTES IN THE U.S. (cont.)

SAWW - State's Average Weekly Wage

Jurisdiction	Percentage of Worker's Wage	Payments Per Week			Maximum Period For Unscheduled Injury	Notes
		Minimum	Maximum	Percentage of SAWW		
Kansas.....	66 2/3	----------	$256.00	75	415 weeks	Total amount payable is $100,000.
Kentucky.....	66 2/3	Payable, but not statutorily prescribed.	$247.90	75	425 weeks	(Benefits represent unscheduled injuries only).
Louisiana.....	66 2/3	----------	$262.00	75	520 weeks	
Maine.....	66 2/3	Payable, but not statutorily prescribed.	$447.92*	166 2/3	Duration of disability	(*Maximum weekly benefit is frozen at $447.92 for injuries occurring on or after 7/1/85 until 8/1/88.) WC benefits, except for scheduled PPD, are subject to UI benefit offsets.
Maryland.....	66 2/3	$50 or actual wage if less.	$287.00 (serious cases-250 weeks or more)	75	Duration of disability	Benefits are in addition to compensation for TTD.
	*33 1/3		$128.00 (nonserious cases-75 to 249 weeks)	33 1/3		
			*$80 (minor nonserious cases-1 to 74 weeks)			

TABLE 8. BENEFITS FOR PERMANENT PARTIAL DISABILITY PROVIDED BY WORKERS' COMPENSATION STATUTES IN THE U.S. (cont.)

SAWW - State's Average Weekly Wage

Jurisdiction	Percentage of Worker's Wage	Payments Per Week			Maximum Period For Unscheduled Injury	Notes
		Minimum	Maximum	Percentage of SAWW		
Massachusetts	(66 2/3% of the difference between employee's AWW before injury and AWW after injury.)	Payable, but not statutorily prescribed.	$411.00	100	600 weeks	Bulk sums allowed for scheduled losses depending on extent of loss. Additional $6 will be added per dependent, if weekly benefits are below $150. Total maximum payable not to exceed employee's AWW or 250 times the SAWW in effect at time of injury. WC benefits subject to reduction by UI and Social Security benefits.
Michigan....	80% of worker's spendable earnings.	$110.19 - 25% of SAWW for scheduled injury only.	$397.00	90	Duration of disability	WC benefits subject to reduction by UI.
Minnesota...	66 2/3	Payable, but not statutorily prescribed.	$376.00	100	350 weeks	

TABLE 8. BENEFITS FOR PERMANENT PARTIAL DISABILITY PROVIDED BY WORKERS' COMPENSATION STATUTES IN THE U.S. (cont.)

SAWW - State's Average Weekly Wage

Jurisdiction	Percentage of Worker's Wage	Payments Per Week			Maximum Period For Unscheduled Injury	Notes
		Minimum	Maximum	Percentage of SAWW		
Mississippi..	66 2/3	$25 for scheduled injuries.	$140.00	N/A	450 weeks	Benefits are in addition to compensation for TTD. Total amount payable is $63,000.
Missouri....	66 2/3	$40	$161.89	45	400 weeks	Benefits are in addition to compensation for TTD.
Montana.....	66 2/3	Payable, but not statutorily prescribed.	$149.50*	50	500 weeks	(*Maximum weekly benefit is frozen at $149.50 for injuries occurring on or after 7/1/87 until 7/1/89.) Benefits are in addition to compensation for TTD. WC benefits are subject to Social Security benefit offsets.
Nebraska...	66 2/3	$49 or actual wage if less for scheduled injuries.	$235.00	N/A	300 weeks	If partial disability begins after a period of total disability, the period of total disability will be deducted from the 300 week limit for PPD.

TABLE 8. BENEFITS FOR PERMANENT PARTIAL DISABILITY PROVIDED BY WORKERS' COMPENSATION STATUTES IN THE U.S. (cont.)

SAWW - State's Average Weekly Wage

Jurisdiction	Percentage of Worker's Wage	Payments Per Week			Maximum Period For Unscheduled Injury	Notes
		Minimum	Maximum	Percentage of SAWW		
Nevada.....	----------	Payable, but not statutorily prescribed.	--------	N/A	Duration of disability	The % of disability is determined by the Commission using AMA guides. Each 1% of impairment of the whole man is compensated by a monthly payment of 0.6% of the claimant's average monthly wage for 5 years or until the 70th birthday of the claimant, whichever is later.
New Hampshire	66 2/3	$140 - 40% of SAWW or actual wage if less.	$525.00	150	Duration of disability	If the employee's AWW exceeds 40% of SAWW, compensation will increase to 66 2/3% of employee's AWW not to exceed 150% of SAWW.

TABLE 8. BENEFITS FOR PERMANENT PARTIAL DISABILITY PROVIDED BY WORKERS' COMPENSATION STATUTES IN THE U.S. (cont.)

SAWW - State's Average Weekly Wage

Jurisdiction	Percentage of Worker's Wage	Payments Per Week			Maximum Period For Unscheduled Injury	Notes
		Minimum	Maximum	Percentage of SAWW		
New Jersey.....	70	$85 - 20% of SAWW.	$320.00	75	600 weeks	Benefits set in accordance with a "wage and compensation schedule" and are paid in addition to those for TTD.
New Mexico....	66 2/3	$36 or actual wage if less for scheduled injuries.	$270.97	85	500 weeks; 700 weeks for scheduled injuries; 100 weeks (primary and secondary mental impairment.)	Total maximum equals 500 multiplied by the sum of the maximum weekly benefit at time of injury. If partial disability begins after a period of total disability, the period of total disability shall be deducted from the maximum period.
New York.....	66 2/3	$30 or actual wage if less.	$150.00	N/A	Duration of disability	
North Carolina	66 2/3	$30 for scheduled injuries.	$356.00	110	300 weeks	

TABLE 8. BENEFITS FOR PERMANENT PARTIAL DISABILITY PROVIDED BY WORKERS' COMPENSATION STATUTES IN THE U.S. (cont.)

SAWW - State's Average Weekly Wage

Jurisdiction	Percentage of Worker's Wage	Payments Per Week			Maximum Period For Unscheduled Injury	Notes
		Minimum	Maximum	Percentage of SAWW		
North Dakota..	----------	$60	$60.00	N/A	500 weeks	Compensation for TTD and PPD may be paid concurrently.
Ohio.....	66 2/3	$154.00 - 40% of SAWW for scheduled injuries.	$385.00	100	----------	See 3/ Benefits are in addition to compensation for TTD.
Oklahoma.....	66 2/3	$30 or actual wage if less.	$173.00	50	500 weeks	*(Benefits are frozen at $173 from 11/1/87 until 11/1/90.)
Oregon.....	66 2/3	$50	$355.04	100	In proportion to scheduled injuries.	Scheduled PPD's are compensated at $145 for each degree of disability; and non-scheduled PPD's are compensated at $100 for each degree of disability, subject to the maximum of 320 degrees.

3/ Ohio: Unscheduled injuries are paid for as a percentage of 200 weeks at a maximum of 33 1/3% of the SAWW, and are set at 66 2/3% of the employee's average wage.

TABLE 8. BENEFITS FOR PERMANENT PARTIAL DISABILITY PROVIDED BY WORKERS' COMPENSATION STATUTES IN THE U.S. (cont.)

SAWW - State's Average Weekly Wage

Jurisdiction	Percentage of Worker's Wage	Payments Per Week			Maximum Period For Unscheduled Injury	Notes
		Minimum	Maximum	Percentage of SAWW		
Pennsylvania..	66 2/3	----------	$377.00	100	500 weeks	WC for non-scheduled awards is determined at 66 2/3% of the difference between the wages of the injured employee and the earning power of the employee thereafter up to the SAWW.
Puerto Rico..	66 2/3	$10	$45.00	N/A	In proportion to scheduled injuries.	Benefits are in addition to compensation for TTD. Total maximum payable is $10,000.
Rhode Island..	(Up to 66 2/3 of the difference between the worker's earnings before and after injury.)	$45 for scheduled injuries.	$337.00 - nonscheduled injury $90 - scheduled injury	100	Duration of disability	If employee cannot obtain suitable work and employer cannot provide such work or show it is available elsewhere, benefits are paid as for total incapacity.

TABLE 8. BENEFITS FOR PERMANENT PARTIAL DISABILITY PROVIDED BY WORKERS' COMPENSATION STATUTES IN THE U.S. (cont.)

SAWW - State's Average Weekly Wage

Jurisdiction	Percentage of Worker's Wage	Payments Per Week			Maximum Period For Unscheduled Injury	Notes
		Minimum	Maximum	Percentage of SAWW		
South Carolina..	66 2/3	$25 for scheduled injuries.	$319.20	100	340 weeks	Benefits are in addition to compensation for TTD.
South Dakota....	66 2/3 (scheduled) 50 (non-scheduled)	$136 or worker's average wage if less.	$272.00	100	Duration of disability	
Tennessee.....	66 2/3	$30	$210.00	N/A	400 weeks	Eff. 7/1/88, maximum weekly benefit will increase to $231; and to $252, 7/1/89. Total amount payable is $75,600.
Texas.....	66 2/3	$39 for scheduled injuries.	$231.00	N/A	300 weeks	Each cumulative $10 increase in the AWW for manufacturing production workers will increase the maximum weekly benefit by $7 per week and the minimum by $1 per week.

TABLE 8. BENEFITS FOR PERMANENT PARTIAL DISABILITY PROVIDED BY WORKERS' COMPENSATION STATUTES IN THE U.S. (cont.)

SAWW - State's Average Weekly Wage

Jurisdiction	Percentage of Worker's Wage	Payments Per Week			Maximum Period For Unscheduled Injury	Notes
		Minimum	Maximum	Percentage of SAWW		
Utah.....	66 2/3	$45 to $70 according to number of dependents but not more than the employee's AWW.	$224.00	66 2/3	312 weeks	In case partial disability begins after a period of total disability, the period of total disability shall be deducted from the maximum.
Vermont.....	66 2/3	$162 - 50% of SAWW, or worker's average wage if less.	$486.00	150	330 weeks	
Virgin Islands	66 2/3	$60 or actual wages if less.	$193.00	66 2/3	200 weeks	
Virginia.....	66 2/3	$86.00 - 25% of SAWW, or actual wage if less for scheduled injuries.	$344.00	100	500 weeks	Period of payment may be extended if employee is still disabled within 1 year of final payment.

TABLE 8. BENEFITS FOR PERMANENT PARTIAL DISABILITY PROVIDED BY WORKERS' COMPENSATION STATUTES IN THE U.S. (cont.)

SAWW - State's Average Weekly Wage

Jurisdiction	Percentage of Worker's Wage	Payments Per Week			Maximum Period For Unscheduled Injury	Notes
		Minimum	Maximum	Percentage of SAWW		
Washington.....	----------	Payable, but not statutorily prescribed.	-------	N/A	----------	Total maximum amount payable for non-scheduled injury is $90,000. 4/
West Virginia..	70	$116.94 - 33 1/3% of SAWW.	$233.99	66 2/3	336 weeks	If disability is 85 to 100%, benefits are payable for life.
Wisconsin.....	66 2/3	$20	$117.00	N/A	1000 weeks	WC benefits are subject to Social Security benefit offsets.
Wyoming.....	66 2/3	---------- -	$235.14	66 2/3% of monthly wage.	In proportion to scheduled injuries	

4/ Washington: Payments based on permanent physical impairment; in event award exceeds three times the State's average monthly wage, employee receives first payment equal to three times the State's average monthly wage with balance in monthly payments per temporary disability schedule plus eight percent interest per annum on unpaid balance.

TABLE 8. BENEFITS FOR PERMANENT PARTIAL DISABILITY PROVIDED BY WORKERS' COMPENSATION STATUTES IN THE U.S. (cont.)

SAWW - State's Average Weekly Wage

Jurisdiction	Percentage of Worker's Wage	Payments Per Week			Maximum Period For Unscheduled Injury	Notes
		Minimum	Maximum	Percentage of SAWW		
United States*:						
FECA.....	66 2/3 - 75	Payable, but not statutorily prescribed.	$1,029.48	N/A	Duration of disability	Maximum weekly benefit is based on 75% of the pay of a specific grade level in the Federal Civil Service.
LHWCA.....	66 2/3	$154.24 - 50% of NAWW, or actual wage if less.	$616.96	200% of NAWW	Duration of disability	(NAWW is $308.48).

*Federal Employee's Compensation Act.
Longshore and Harbor Workers' Compensation Act.

TABLE 9a. MAXIMUM BENEFIT PAYMENTS AND NUMBER OF WEEKS FOR SELECTED PERMANENT PARTIAL DISABILITIES

Jurisdiction	Scheduled Injuries							Non-Scheduled Injuries Total Amount
	Arm at Shoulder	Hand	Leg at Hip	Foot	Eye	Hearing Both Ears	Hearing One Ear	
Alabama	$48,840/222	$37,400/170	$44,000/200	$30,580/139	$27,280/124	$35,860/163	$11,660/53	$66,000
Alaska	59,000/280	45,400,212	54,400/248	39,700/173	30,200/140	37,800/200	9,800/52	60,000
Arizona	54,454/260	45,448/217	45,448/217	36,233/173	27,227/130	54,454/260	18,221/87	No maximum
Arkansas	32,340/210	24,332/158	28,336/184	20,174/131	16,170/105	24,332/158	6,468/42	69,300
California 1/	----------	----------	----------	----------	----------	----------	----------	No maximum
Colorado	31,200/208	15,600/104	31,200/208	15,600/104	20,850/139	20,850/139	5,250/35	37,560
Connecticut	197,808/312	159,768/252	150,892/238	119,192/188	148,900/235	98,904/156	32,968/52	494,520
Delaware	62,633/250	55,117/220	62,633/250	40,085/160	50,106/200	43,843/175	18,790/75	75,159
Dist. of Col.	180,359/312	117,588/244	138,793/288	98,794/205	77,107/160	96,384/200	25,060/52	No maximum
Florida 3/	----------	----------	----------	----------	----------	----------	----------	165,375
Georgia	39,375/225	28,000/160	39,375/225	23,625/135	26,250/150	26,250/150	13,125/75	61,250
Hawaii	104,208/312	81,496/244	96,192/288	68,470/205	53,440/160	66,800/200	17,368/52	104,208
Idaho	51,810/300	46,629/270	34,540/200	24,178/140	30,223/175	30,223/175	1/	86,350
Illinois	166,281/300	105,311/190	152,424/275	85,912/155	88,683/160	59,830/200	14,958/50	No maximum
Indiana	18,750/250	15,000/200	16,875/225	13,125/175	13,125/175	15,000/200	5,625/75	37,500
Iowa	145,500/250	110,580/190	128,040/220	87,300/150	81,480/140	101,850/175	29,100/50	291,000
Kansas	53,760/210	38,400/150	51,200/200	32,000/125	30,720/120	28,160/110	7,680/30	100,000
Kentucky 1/	----------	----------	----------	----------	----------	----------	----------	102,697
Louisiana	52,400/200	39,300/150	45,850/175	32,750/125	26,200/100	No provision	No provision	136,240
Maine 1/	----------	----------	----------	----------	----------	----------	----------	No maximum
Maryland 4/	152,971/400	127,428/333	152,971/400	127,428/333	127,428/333	127,428/333	16,000/125	No maximum
Massachusetts 5/	17,673	13,974	16,029	11,919	16,029	31,647	11,919	246,600
Michigan	106,793/269	85,355/215	85,355/215	64,314/162	64,314/162	No provision	No provision	No maximum
Minnesota 1/	----------	----------	----------	----------	----------	----------	----------	----------
Mississippi	28,000/200	21,000/150	24,500/175	17,500/125	14,000/100	21,000/150	5,600/40	63,000
Missouri 6/	41,314/232	31,164/175	36,862/207	26,712/150	22,665/140	27,198/168	7,123/44	64,756
Montana 1/	----------	----------	----------	----------	----------	----------	----------	74,750