

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672  
4820 HLAB HB 352 - HB 368

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5. Amend (AS 23.30.180) to delete (3) and (4) so that in determining PTD, the labor market is defined as within a workers area of residence or last area of employment.
6. Amend language governing the contents of the annual report to break out the costs of legal fees to reflect the fees paid to both the plaintiff and defense attorney, including all other costs associated with litigation.
7. Amend Section 9 (AS 23.30.040(c) to read: "The employee shall request an eligibility evaluation within 90 days after the employee gives the employer notice of injury unless the administrator determines the employee has unusual and extenuating physical limitations, including when an employee suffered an injury in which the employee does not know or could not have reasonably known that they would be unable to return to their previous occupation as a result of their injury that prevent the employee from making a timely request."
8. Amend Section 11 (AS 23.30.095(a) to provide that an employers choice of physician for an IME is limited to no more than one change in choice, as is an employees right of choice under the proposed legislation.
9. Amend Section 32 (AS 23.30.220(a) (2) to delete the word "voluntary" and to change the 18 months standard on page 26, line 12 to 12 months.
10. Amend Section 41 (effective date) so that this act applies to any "stress" injury that occurred on or after the date of adoption of this bill by the Legislature.
11. Include language requiring that an IME must be in the same speciality as the treating physician unless the Board unanimously agrees, on a case by case basis, to authorize an IME by a physician who is not within the same speciality of the employees physician.
12. Amend Section 21 (AS 23.30.155(c) (page 19, line 3) to provide that penalties assessed under this subsection shall be increased by (20) 30 percent.
13. Include new language amending AS 23.30.155 (f) (governing penalties for unfair denial of claims) to increase penalties from 20 percent, under current law, to 25 percent.
14. Amend Section 29 (AS 23.30.190(b) to change "may" to "shall" on page 24, line 27.
15. Include a new section requiring that benefits paid to recipients residing in Alaska be paid by checks drawn on Alaska banks or other method of payment that is accepted as immediately redeemable by a bank in this state.

16. Amend AS 23.30.041(k) (Page 9, line 14) to read: (k) "Benefits related to the reemployment plan may not extend past two years from date of plan approval (ACCEPTANCE), at which time the benefits.....".
17. Amend Section 13 (AS 23.30.095(e) to reinstate the deleted language and to add new language so that it reads: "AUTHORIZED TO PRACTICE MEDICINE UNDER THE LAWS OF THE jurisdiction in which the physician resides (STATE IN WHICH THE EMPLOYEE MAY BE FOUND)".

In addition to the changes in the proposed CS listed above, following are proposed amendments that the Committee may wish to consider for inclusion in the final committee substitute.

1. Include a new section to allow the time period for determining the base period for unemployment compensation to begin after temporary benefits under workers' compensation have ceased if the worker is (1) eligible for unemployment compensation by having paid into the system while they were employed and (2) are "ready, willing, and able" to work but have not been able to find a job. (See attachment #2 - copy of Washington State law).

The Department of Labor has been asked to determine whether this addition will require a fiscal note for SB 322 that may result in a further referral to the House Finance Committee.

2. Add a new section to repeal and reenact AS 23.30.110(C) so that it reads as per attachment #3. The proposed language is in response to public testimony that there has been a significant increase in the amount of time between filing a case and obtaining a formal hearing before the Board. The Division response is that the time lag is caused by attorney requests for a continuance after a case has been scheduled and comes before the Board. The result is that the hearing time is wasted because another case cannot be scheduled on such short notice. The attorney response to the Divisions' response is that they have to request a hearing when they receive a case even if they aren't ready to proceed to hearing because it takes so long to get a hearing scheduled. The Divisions response to the attorney response is that it wouldn't take so long to get a hearing scheduled if they didn't have so many continuances.!

The proposed language in attachment #3 addresses this problem in a way that will not unfairly impact the employer or employee and will help the Board to manage their hearing schedule in a more responsive and efficient manner.

#7

A M E N D M E N T

Offered in the HOUSE

By Donley

TO: HB 352

Page 27, after line 3:

Insert a new bill section to read:

"\* Sec. 36. Notwithstanding AS 21.39.030, an insurer providing workers' compensation insurance in the state shall provide at least a 10 percent reduction in the premium rate charged within the state for workers' compensation insurance, for the period beginning July 1, 1988, and ending January 1, 1990."

Renumber remaining bill sections accordingly.

Page 27, line 4:

Delete "This Act applies only"

Insert "Sections 1 - 35 of this Act apply"

for any payment) on account of death, provided the individual in its employ

(1) has not the option to receive instead of provisions for such death benefits, any part of such payment, or, if such death benefit is insured, any part of the premium (or contributions to premiums) paid by his employing unit; and

(2) has not the right under the provisions of the plan or system or policy of insurance providing for such death benefits to assign such benefits or to receive a cash consideration in lieu of such benefits, either upon his withdrawal from the plan or system providing for such benefits or upon termination of such plan or system or policy of insurance or of his services with such employing unit. [1951 c 265 § 5; 1949 c 214 § 6; 1945 c 35 § 35; Rem. Supp. 1949 § 9998-173. Prior: 1943 c 127 § 13; 1941 c 253 § 14.]

**Severability**—1951 c 265: See note following RCW 50.98.070.

**50.04.350 Wages, remuneration**—Excepted payments. The term "wages" shall not include the payment by an employing unit (without deduction from the remuneration of the individual in its employ) of the tax imposed upon an individual in employment under section 1400 of the federal internal revenue code, as amended, or any amount paid to a person in the military service for any pay period during which he performs no service for the employer: *Provided, however,* That prior to January 1, 1952, the term "wages" shall not include dismissal payments which an employing unit is not legally required to make. [1951 c 265 § 2; 1945 c 35 § 36; Rem. Supp. 1945 § 9998-174. Prior: 1943 c 127 § 13; 1941 c 253 § 14.]

**Severability**—1951 c 265: See note following RCW 50.98.070.

**50.04.355 Wages, remuneration**—Average annual wage—Average weekly wage—Average annual wage for contributions purposes. On or before the fifteenth day of June of each year an "average annual wage", an "average weekly wage", and an "average annual wage for contributions purposes" shall be computed from information for the preceding calendar year including corrections thereof reported within three months after the close of that year by all employers as defined in RCW 50.04.080. The "average annual wage" is the quotient derived by dividing total remuneration reported by all employers by the average number of workers reported for all months and if the result is not a multiple of one dollar, rounding the result to the next lower multiple of one dollar. The "average annual wage" thus obtained shall be divided by fifty-two and if the result is not a multiple of one dollar, rounding the result to the next lower multiple of one dollar to determine the "average weekly wage". The "average annual wage" for contribution purposes is the quotient derived by dividing total remuneration reported by all employers subject to contributions by the average number of workers reported for all months by these same employers and if the result is not a multiple of one dollar, rounding the result to the next lower multiple of one dollar. [1977 ex.s. c 33 § 2;

1975 1st ex.s. c 228 § 1; 1973 6.]

**Effective dates**—Construction—following RCW 50.04.030.

**Effective date**—1975 1st ex.s. c amendatory act are necessary for the public peace, health, and safety, the and its existing public institutions. Sunday following signature by the g 19.]

**Effective date**—1973 c 75: See note following RCW 50.04.030.

**Effective date**—1970 ex.s. c 2: See note following RCW 50.04.020.

**50.04.360 Week.** "Week" means any period of seven consecutive calendar days ending at midnight as the commissioner may by regulation prescribe. [1945 c 35 § 37; Rem. Supp. 1945 § 9998-175. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 16; 1937 c 162 § 19.]

#2

## Chapter 50.06 TEMPORARY TOTAL DISABILITY

Sections	Purpose.
50.06.010	Allowable beneficiaries.
50.06.020	Application for initial determination of disability— Special base year—Special individual benefit year.
50.06.040	Laws and regulations governing amounts payable and right to benefits.
50.06.050	Use of wages and time worked for prior claims— Effect.
50.06.900	Chapter prospective.
50.06.910	Partial invalidity of chapter.

**50.06.010 Purpose.** This chapter is enacted for the purpose of providing the protection of the unemployment compensation system to workers who have suffered a temporary total disability compensable under industrial insurance and is a recognition by this legislature of the economic hardship confronting those workers who have not been promptly reemployed after a prolonged period of temporary total disability. [1975 1st ex.s. c 228 § 7.]

**Effective date**—1975 1st ex.s. c 228: See note following RCW 50.04.355.

**50.06.020 Allowable beneficiaries.** Only individuals who have suffered a temporary total disability and have received compensation under the industrial insurance laws of this state, any other state or the United States for a period of not less than thirteen consecutive calendar weeks by reason of such temporary total disability shall be allowed the benefits of this chapter. [1975 1st ex.s. c 228 § 8.]

**Effective date**—1975 1st ex.s. c 228: See note following RCW 50.04.355.

**50.06.030 Application for initial determination of disability—Special base year—Special individual benefit year.** An application for initial determination made pursuant to this chapter, to be considered timely, must be filed in writing with the employment security department within twenty-six weeks following the week

in which the period of temporary total disability commenced. Notice from the department of labor and industries shall satisfy this requirement. The records of the agency supervising the award of compensation shall be conclusive evidence of the fact of temporary disability and the beginning date of such disability. The employment security department shall process and issue an initial determination of entitlement or nonentitlement as the case may be.

For the purpose of this chapter, a special base year is established for an individual consisting of the first four of the last five completed calendar quarters immediately prior to the first day of the calendar week in which the individual's temporary total disability commenced, and a special individual benefit year is established consisting of the entire period of disability and a fifty-two consecutive week period commencing with the first day of the calendar week immediately following the week or part thereof with respect to which the individual received his final temporary total disability compensation under the applicable industrial insurance laws except that no special benefit year shall have a duration in excess of three hundred twelve calendar weeks: *Provided however*, That such special benefit year will not be established unless the criteria contained in RCW 50.04.030 *has been met, attached* except that an individual meeting the disability and filing requirements of this chapter and who has an unexpired benefit year established which would overlap the special benefit year provided by this chapter, notwithstanding the provisions in RCW 50.04.030 relating to the establishment of a subsequent benefit year and RCW 50.40.010 relating to waiver of rights, may elect to establish a special benefit year under this chapter: *Provided further*, that the unexpired benefit year shall be terminated with the beginning of the special benefit year if the individual elects to establish such special benefit year. [1975 1st ex.s. c 228 § 9.]

*Effective date*—1975 1st ex.s. c 228: See note following RCW 50.04.355.

**50.06.040 Laws and regulations governing amounts payable and right to benefits.** The individual's weekly benefit amount and maximum amount payable during the special benefit year shall be governed by the provision contained in RCW 50.20.120. The individual's basic and continuing right to benefits shall be governed by the general laws and regulations relating to the payment of unemployment compensation benefits to the extent that they are not in conflict with the provisions of this chapter. [1975 1st ex.s. c 228 § 10.]

*Effective date*—1975 1st ex.s. c 228: See note following RCW 50.04.355.

**50.06.050 Use of wages and time worked for prior claims—Effect.** The fact that wages, hours or weeks worked during the special base year may have been used in the computation of a prior valid claim for unemployment compensation shall not affect a claim for benefits made pursuant to the provisions of this chapter; however, wages, hours and weeks worked used in computing entitlement on a claim filed pursuant to this chapter shall not be available or used for establishing entitlement

[1975 1st ex.s. c 228 § 11.]

*Effective date*—1975 1st ex.s. c 228: See note following RCW 50.04.355.

**50.06.900 Chapter prospective.** This chapter shall be available only to individuals who suffer a temporary total disability, compensable by an industrial insurance program, after the effective date of this chapter. [1975 1st ex.s. c 228 § 12.]

*Effective date*—1975 1st ex.s. c 228: See note following RCW 50.04.355.

**50.06.910 Partial invalidity of chapter.** Should any part of this chapter be declared unconstitutional by the final decision of any court or declared out of conformity by the United States secretary of labor, the commissioner shall immediately discontinue the payment of benefits based on this chapter, declare it inoperative and report that fact to the governor and the legislature. [1975 1st ex.s. c 228 § 13.]

*Effective date*—1975 1st ex.s. c 228: See note following RCW 50.04.355.

## Chapter 50.08

### ESTABLISHMENT OF DEPARTMENT

#### Sections

50.08.010 Employment security department established.  
50.08.020 Divisions established.

*Displaced homemaker act, departmental participation: RCW 28B.04.080.*

**50.08.010 Employment security department established.** There is established the employment security department for the state, to be administered by a commissioner. The commissioner shall be appointed by the governor with the consent of the senate, and shall hold office at the pleasure of, and receive such compensation for his services as may be fixed by, the governor. [1953 ex.s. c 8 § 3; 1947 c 215 § 8; 1945 c 35 § 38; Rem. Supp. 1947 § 9998-176. Prior: 1939 c 19 § 1; 1937 c 162 § 12.]

**50.08.020 Divisions established.** There are hereby established in the employment security department two coordinate divisions to be known as the unemployment compensation division, and the Washington state employment service division, each of which shall be administered by a full time salaried supervisor who shall be an assistant to the commissioner and shall be appointed by him. Each division shall be responsible to the commissioner for the dispatch of its distinctive functions. Each division shall be a separate administrative unit with respect to personnel, budget, and duties, except insofar as the commissioner may find that such separation is impracticable.

It is hereby further provided that the governor in his discretion may delegate any or all of the organization, administration and functions of the said Washington state employment service division to any federal agency.



50.04.310	Unemployed individual.
50.04.320	Wages, remuneration.
50.04.323	Wages, remuneration—Government or private retirement pension plan payments—Effect upon eligibility—Reduction in benefits—Exceptions.
50.04.330	Wages, remuneration—Retirement and disability payments excepted.
50.04.340	Wages, remuneration—Death benefits excepted.
50.04.350	Wages, remuneration—Excepted payments.
50.04.355	Wages, remuneration—Average annual wage—Average weekly wage—Average annual wage for contributions purposes.
50.04.360	Week.

\*Application for initial determination\* defined: RCW 50.20.140.

\*Claim for benefits\* defined: RCW 50.20.140.

\*Claim for waiting period\* defined: RCW 50.20.140.

**50.04.020 Base year.** "Base year" with respect to each individual, shall mean the first four of the last five completed calendar quarters immediately preceding the first day of the individual's benefit year. [1970 ex.s. c 2 § 1; 1945 c 35 § 3; Rem. Supp. 1945 § 9998-142. Prior: 1943 c 127 § 13; 1939 c 214 § 19; 1937 c 162 § 19.]

**Effective date.**—1970 ex.s. c 2: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect April 5, 1970: *Provided*, That sections 3 and 8 of this 1970 amendatory act shall not take effect until January 1, 1971." [1970 1st ex.s. c 2 § 25.] This act is codified in RCW 50.04.020, 50.04.030, 50.04.320, 50.20.010, 50.20.120, 50.04.355, 50.20.150, 50.24.010, 50.29.010 through 50.29.080 and 50.29.140, 50.04.323, 50.20.030, 50.20.050, 50.20.060 and 50.20.127; sections 3 and 8 are codified in RCW 50.04.320 and 50.24.010.

**50.04.030 Benefit year.** "Benefit year" with respect to each individual, means the fifty-two consecutive week period beginning with the first day of the calendar week in which the individual files an application for an initial determination and thereafter the fifty-two consecutive week period beginning with the first day of the calendar week in which the individual next files an application for an initial determination after the expiration of the individual's last preceding benefit year: *Provided, however*, That the foregoing limitation shall not be deemed to preclude the establishment of a new benefit year under the laws of another state pursuant to any agreement providing for the interstate combining of employment and wages and the interstate payment of benefits nor shall this limitation be deemed to preclude the commissioner from backdating an initial application at the request of the claimant either for the convenience of the department of employment security or for any other reason deemed by the commissioner to be good cause.

An individual's benefit year shall be extended to be fifty-three weeks when at the expiration of fifty-two weeks the establishment of a new benefit year would result in the use of a quarter of wages in the new base year that had been included in the individual's prior base year.

No benefit year will be established unless it is determined that the individual earned wages in "employment" in not less than six hundred eighty hours of the individual's base year: *Provided, however*, That a benefit

year unless the individual earned wages in "employment" during the last two quarters of the new base year of not less than six times the weekly benefit amount computed for the individual's new benefit year.

If the wages of an individual are not based upon a fixed duration of time or if the individual's wages are paid at irregular intervals or in such manner as not to extend regularly over the period of employment, the wages for any week shall be determined in such manner as the commissioner may by regulation prescribe. Such regulation shall, so far as possible, secure results reasonably similar to those which would prevail if the individual were paid his or her wages at regular intervals. [1977 ex.s. c 33 § 1; 1973 c 73 § 1; 1970 ex.s. c 2 § 1; 1949 c 214 § 1; 1945 c 35 § 4; Rem. Supp. 1949 § 9998-143. Prior: 1943 c 127 § 13; 1939 c 214 § 19; 1937 c 162 § 19.]

**Effective dates.**—Construction.—1977 ex.s. c 33: "The provisions of this 1977 amendatory act are necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions and shall take effect ninety days after adjournment sine die of the 1977 Extraordinary Session (forty-fifth legislature) of the Washington State Legislature. *Provided*, That the first paragraph of section 1 of this 1977 amendatory act shall take effect immediately and the remaining portion of section 1 of this 1977 amendatory act and all of section 2 of this 1977 amendatory act shall take effect commencing with benefit years beginning on and after October 1, 1978; section 7 of this 1977 amendatory act shall take effect commencing with benefit years beginning on and after July 3, 1977." [1977 ex.s. c 33 § 11.]

**Reviser's note:** The various sections of this 1977 amendatory act [1977 ex.s. c 33] referred to in the above section are codified as follows: Section 1 as RCW 50.04.030, section 2 as RCW 50.04.355, section 3 as RCW 50.12.070; section 4 as RCW 50.20.050; section 5 as RCW 50.20.060; section 6 as RCW 50.20.100; section 7 as RCW 50.20.120; section 8 as RCW 50.20.095.

**Effective dates.**—1973 c 73: "Sections 7, 8, 10, 11, and 12 of this 1973 amendatory act are necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately. Sections 1, 2, 3, 4, 5, 6, and 9 of this 1973 amendatory act shall take effect on July 1, 1973." [1973 c 73 § 13.]

**Reviser's note:** The effective date of sections 7, 8, 10, 11, and 12 was March 8, 1973. The effective date of sections 1, 2, 3, 4, 6 and 9 was July 1, 1973. Section 5 referred to above was vetoed.

**Effective date.**—1970 ex.s. c 2: See note following RCW 50.04.020.

**50.04.040 Benefits.** "Benefits" means the compensation payable to an individual, as provided in this title, with respect to his unemployment. [1945 c 35 § 5; Rem. Supp. 1945 § 9998-144. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 219 § 19; 1937 c 162 § 19.]

**50.04.050 Calendar quarter.** "Calendar quarter" means the period of three consecutive calendar months ending on March 31st, June 30th, September 30th, or December 31st. [1945 c 35 § 6; Rem. Supp. 1945 § 9998-145. Prior: 1943 c 127 § 13; 1939 c 214 § 19; 1937 c 162 § 19.]

**50.04.060 Commissioner.** "Commissioner" means the administrative head of the state employment security department referred to in this title. [1947 c 215 § 1; 1945 c 35 § 7; Rem. Supp. 1947 § 9998-146. Prior:

#3

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

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



DRAFT LETTER OF INTENT FOR  
HCS CS SB 322 (L&C) - WORKERS' COMPENSATION LEGISLATION

(EXISTING LETTER OF INTENT ADOPTED BY THE SENATE)  
LETTER OF INTENT FOR CS SB 322 (L&C)

With an actuarial analysis concluding that this bill will provide a two percent savings in hard costs and an unquantifiable amount of soft dollar savings, it is the intent of the Alaska State Senate that, upon passage of this bill, the Division of Insurance request new rate filing reflecting a decution in workers' compensation premiums.

PROPOSED LETTER OF INTENT FOR HCS CS SB 322 (L&C)

The legislature recognizes that the increasing costs of workers' compensation insurance is creating a great hardship on Alaska's workers, our employers, and the insurance carriers that serve our businesses.

It is the intent of the Legislature in adopting this legislation to enable a more efficient, fair, and cost effective delivery of services under Alaska's workers compensation system. To accomplish this, SB 322 demands significant concessions from employees and employers. It is the intent of the legislature in adopting this measure that each party to the workers' compensation system in Alaska, including workers, employers, and workers' compensation insurance carriers, initiate actions necessary to reduce the number of work related injuries, to assure prompt and fair compensation to injured workers, and to create incentives for prompt and fair settlement of disputes regarding workers' compensation claims.

With an acturarial analysis that concludes that this legislaton will provide at least a two percent savings in hard costs and with public testimony before this body that the measure will bring about significant soft dollar savings, it is the intent of the legislature that, upon passage of this bill, the Division of Insurance request a new rate filing reflecting a reduction from current rates in workers' compensation premiums of no less than 10 percent as of July 1, 1988 and that this rate be maintained through January 1, 1990.

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y - STATE CAPITOL  
JUNEAU, ALASKA 99811  
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

January 12, 1988

SUBJECT: Workers' Compensation - SB 322

TO: Senator Tim Kelly  
Chairman  
Senate Labor and Commerce Committee

FROM: Michael F. Ford *M.F.*  
Legislative Counsel

The following is a sectional analysis of the above referenced bill:

Section 1 - Establishes the legislative intent of the bill.

Section 2 - Creates additional departmental authority regarding rehabilitation specialists and physicians who are involved in rehabilitation.

Section 3 - Requires the department to adopt new regulations if an existing regulation is held invalid by the state supreme court.

Section 4 - Precludes certain employees who knowingly make a false statement on an employment application from receiving compensation benefits.

Section 5 - Alters the time for an employer to make required contributions to the second injury fund.

Section 6 - Establishes the responsibility and authority of the department regarding rehabilitation of injured workers. Establishes specific eligibility criteria requirements for rehabilitation plans, specifies reemployment benefits, and duties of the employee while receiving reemployment benefits. Provides time limits for reemployment plans, limits the cost to the employer of the plan, and provides that only a rehabilitation specialist may perform certain casework. Also includes a definitions subsection.

Section 7 - Establishes that the liability of the employer is limited to workers compensation even if the employee is barred from receiving compensation because the employee knowingly made a false employment application.

Section 8 - Limits the employee's designation of a physician to the state where the employee resides. Provides the employee may make only one change of physician without consent of the employer and requires notice of the change.

Section 9 - Establishes that a written plan is required for continuing medical treatment. Specifies the contents of the treatment plan and requires certain documentation.

Section 10 - Provides that the employee shall submit to examination by a physician chosen by the employer, and establishes a presumption of reasonableness for certain examinations.

Section 11 - Establishes a fee standard for medical treatment.

Section 12 - Authorizes the board to appoint a medical services review committee to assist the board in issues regarding the cost of medical services.

Section 13 - Establishes procedures in the event of conflicting medical opinions. Provides for independent medical examination and creates a presumption that this opinion is correct.

Section 14 - Specifies that a claim may be filed within two years of the last payment of certain benefits.

Section 15 - Provides that the presumption of compensability does not apply to a mental injury resulting from work related stress.

Section 16 - Establishes that a finding of fact made by the board in a compensation order and supported by any evidence, is conclusive if the employer and employee have also met their proof requirements.

Section 17 - Specifies that the board may review a compensation case brought within one year after the last payment of certain benefits.

Section 18 - Provides that certain employer penalties may be reduced as provided under AS 23.30.155(m).

Section 19 - Requires the most recent employer to make temporary disability payment when there is a dispute as to which employer is responsible for compensation.

Section 20 - Requires the employer to submit a report regarding total compensation paid and provides for a reduction in certain late report penalties.

Section 21 - Establishes the weekly rate of compensation for disability or death for in-state and out-of-state recipients. Requires the board to establish regulations for determining living costs.

Section 22 - Establishes a market for an employee's services in determining permanent total disability.

Section 23 - Provides that failure to achieve remunerative employment as defined in AS 23.30.041(m)(7) does not by itself constitute permanent total disability.

Section 24 - Establishes limits on payment of temporary total disability.

Section 25 - Provides compensation for permanent partial impairment and establishes guidelines for determining the existence and degree of impairment.

Section 26 - Limits payment of temporary partial disability compensation to two years or the date of medical stability, except as provided in AS 23.30.041.

Section 27 - Provides for determination of an employee's wage earning capacity, for purposes of temporary partial disability compensation.

Section 28 - Provides for calculation of an employee's spendable weekly wage. Limits the compensation due an employee who had no earnings during the two calendar years preceding injury, or was voluntarily absent for 18 months or more of the previous two years.

Section 29 - Establishes a reduction in weekly compensation benefits when an employer makes a contribution to a pension or profit sharing plan of the employee.

Senator Tim Kelly  
Page 4  
January 12, 1988

Section 30 - Prohibits discrimination against an employee who files a good faith claim for compensation benefits.

Section 31 - Redefines "gross earnings" to include certain pension and profit sharing contributions.

Section 32 - Redefines "injury" to exclude certain mental injuries.

Section 33 - Definition of medical stability.

Section 34 - Repeals existing wage earning determination for partial disability compensation.

Section 35 - Transitional provision for contributions to the second injury fund.

Section 36 - Applicability section.

Section 37 - Effective date.

MFF:bb  
WKB1/041

# STATE OF ALASKA

## DEPARTMENT OF LABOR

### DIVISION OF WORKERS' COMPENSATION

STEVE COWPER, GOVERNOR

Ginger  
FPI

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BOX 1149

JUNEAU, ALASKA 99802-0700

PHONE: (907) 465-2790

May 21, 1987

Chancy Croft, Attorney  
613 Cushman Street, Suite 210  
Fairbanks, AK 99701

Dear Chancy:

Re: Board Regulations

This is in response to your April 7 letter in which you object to the Board's "new" regulation dealing with evidence procedures, specifically 8 AAC 45.-120(f)-(m).

Please forgive me for responding so late, but prior to doing so I wanted to refresh my memory on the history of the changes the Board made to this particular section. It was rather a shock to see the latest regulations referred to as "new" since they had been on the drawing board since early 1985.

As you will recall, the Board completely rewrote its regulations in 1983, the first rewrite since 1959. This particular section was substantially changed to deal with Smallwood objections. I note from our records that you gave public testimony on the 1983 regulations in February 1982, and although I do not have a transcript from those proceedings, I am aware that you and Randall Weddle had discussed a possible revision to remedy the problem you both had with §.120. I don't believe we received any proposals for revision from either of you on that particular section; however, I am sure you will remember that §.120 was one of the most controversial subjects discussed at the Fall 1983 public meeting we held to explain the Board's new regulations at the Anchorage Laborer's Hall. The main complaint at that time with the Notice of Intent language, similar to the objections you are currently raising, was that the regulation was too technical and that it created an unfair burden on the unrepresented claimant.

The most recent change to §.120 was adopted, therefore, in response to what the Board felt were well-founded complaints, mostly from attorneys, to the regulatory language you now want to resurrect. The Board's whole purpose in the last revision was to 1) simplify procedures for unrepresented claimants since they would not have to prepare Notices of Intent required by the 1983 regulations, 2) reduce paperwork by eliminating duplicate filing and serving of papers, and 3) put the burden on excluding evidence on the party who wants to keep it out, rather than putting the burden on the party who wants to get



evidence into the record. As an administrative system, it has our intent to make things as simple as possible, despite the obstacles in Smallwood.

Obviously, it is your position and that of Randy Weddle's that we missed the mark. Even though we have only, so far, received complaints from you and Randy, the Board is certainly supportive of any revision that would discourage delays, sabotage, and unnecessary costs in the adjudicatory process. I do take exception to your statement that there was considerable concern and surprise when the new regulations came out, and particularly your statement that many of you did not feel the new regulations would work at that time. My records show that you, along with all attorneys in the workers' compensation system, were notified by the Board of the regulation hearings and, as required, proper notice was posted in the newspapers. Hearings on the regulations were held on July 29, 1985 in Fairbanks - no one appeared; on July 30, 1985 in Anchorage - one insurance adjuster testified and three adjusters observed; and on July 31, 1985 in Juneau - no one appeared. We timely received one letter of regulation comment, and a letter from Randy Weddle which was received after the comment deadline. If you and others had concerns with the proposed regulations, why wasn't written or oral testimony presented for the Board's consideration? That is supposedly the whole purpose behind the regulatory process.

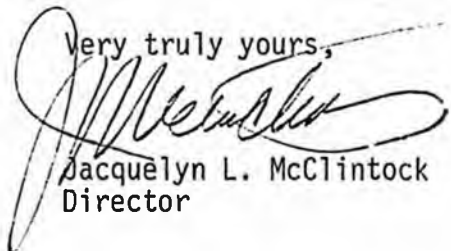
Based on the problems you and Randy state are arising with this regulation, it appears that the new system may very well be in need of further revision. However, considering the fact that the old system raised much more adverse comment, I question that we should simply revert back to that rather than revising the regulation so as to rectify the problems inherent in both the old and new language. In Randy Weddle's June 22, 1982 regulation comment letter to the Board, he stated:

I have considered this problem at length, and I have spoken with Chancy Croft regarding some means of revising the regulation so as to remedy this problem. I am hoping that Mr. Croft will be able to come up with a good solution.

Given the fact that you and Randy are two of the State's leading workers' compensation attorneys in your respective fields, I can think of no better solution to this dilemma than for the two of you to propose regulatory language correcting the problems in 8 AAC 45.120 and present it to the Board at its next annual meeting in Anchorage, to be held in September or October.

Thank you for bringing your concerns to the Board, Chancy.

Very truly yours,

  
Jacquelyn L. McClintock  
Director

cc: Governor Steve Cowper

Senator Tim Kelly, Chairman  
Labor & Commerce Committee

✓ Representative Dave Donley, Chairman  
Labor & Commerce Committee

Commissioner Jim Sampson

Attorney Randall Weddle  
Faulkner, Banfield, Doogan & Holmes

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_  
Title: "An Act relating to Worker's Compensation"  
Sponsor: House Labor & Commerce  
Requestor: House Labor & Commerce

Agency Affected: Labor  
BRU: Worker's Compensation  
Components: Worker's Compensation

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL		112.0	46.7	46.7	46.7	46.7
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		112.0	46.7	46.7	46.7	46.7

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND		112.0	46.7	46.7	46.7	46.7
FEDERAL FUNDS						
OTHER						
TOTAL		112.0	46.7	46.7	46.7	46.7

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Jacque McClintock Phone: 465-2790  
Division: Worker's Compensation Date: 2/16/88  
Approved by Commissioner: Jim Sampson Date: 2/16/88  
Agency: Labor

Distribution (by preparer):  
Legislative Finance  
Legislative Sponsor  
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Office of Management and Budget  
Impacted Agency(ies)

## Analysis of Fiscal Note

For HB 352

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

### 1. Additional Information Requirements

As a result of this bill, additional detail on information items for each workers' compensation claim would have to be reported by employers/ insurers on a by claim and annual basis. This additional information would be input into our computer database which would require a change in the computer programs associated with that system. Estimated costs are \$49,500 to modify the programs, and an additional \$12,500 in CPU time to test and verify the modifications. The total one-time data processing cost would therefore be \$62,000.

### 2. Annual Cost of Living Survey

An annual cost of living survey would be required to adjust the compensation to those workers compensation recipients who move from Alaska. We estimate that 250 locations (an average of 5 per state) would have to be surveyed each year. At \$200 per site, the total cost the first year would be \$50,000. The cost of the survey in future years would decrease slightly to an estimated \$46,700 a year.

### Assumptions:

1. An effective date of July 1, 1988.

MANAGEMENT/LABOR AD HOC COMMITTEE

RESPONSES TO

MEMORANDUM FOR POINTS OF DISCUSSION  
DATED FEBRUARY, 5, 1988

We have examined the concerns raised in the above referenced memorandum. For ease of comparison, our replies follow the same sequence as that used in the memorandum.

1. We are also concerned about the "any evidence" standard and have asked that John Lewis provide some direction as to the standard used in other jurisdictions. The concern of both management and labor is with the overly broad interpretation the courts have applied to the "substantial evidence" standard currently in effect. We will hopefully have a recommendation by February 12

2. Our language was drafted and reviewed by attorneys knowledgeable in the constraints imposed by the courts. It is their opinion that the language will withstand a constitutional challenge

3. For the system to operate as designed, it must be fair to both the injured worker and the employer. Therefore, providers to the system must provide services free of bias for or against either party. It is our desire that the regulations should allow for a bias free system and providers that exhibit bias will not be allowed to provide IME's or rehabilitation services. Health care providers could still continue to operate in the system if chosen by the employee or employer even if they were not on the list of IME providers

4. We think that the standard for knowingly making a false statement is sufficiently strict that it will be difficult to abuse by an employer. If an employee withholds information from an employer for any reason, he could be endangering himself or others since he does not know what duties might be called for on a given job. We think that this section is important to the bill.

5. We have recommended to the board that the lists be maintained on a geographical basis to remove a certain amount of the unnecessary expenditures. We are concerned however that if we deal with the concerns expressed, we are losing sight of the needs of the injured worker, and instead place the travel costs of the rehabilitation specialist above the needs of the worker.

02/25/63 13:15

6. Under the present system, it is estimated that approximately 90% of those that have been rehabilitated have gone back to their prior occupation. It is our belief that when this occurs, it is not necessary to rehabilitate someone for yet another job should they receive a subsequent injury. They have already received the training necessary to compete in a new occupation and we would encourage them to enter that labor market.

The concerns about the minimum threshold of 60% of pre-injury wages fail to recognize that this is the minimum threshold and it would represent an entry level wage. As skills improve, it would be anticipated that salary levels would increase.

7. Dispute resolution language was omitted by legislative drafting. We have included a rewrite of Section 041 which deals with that and other problems.

8. We have modified the time for the eligibility determination from 50 days to 90 days. The time frames are now consistent with the current statute.

9. We have attempted to remove the rehabilitation section from the litigation process. To accomplish this we have put the injured worker in control of his plan, and we have given the administrator the authority to quickly resolve disputes. Since the administrator reports to the board, the board can review his performance on an ongoing basis and accordingly modify the general approach to the job when it does not conform to the guidelines of the board. We believe that this approach is in the best interests of the worker and the system.

10. Employment in this economy is a difficult standard to achieve. Employability is better in that it defines the time when the person is available and prepared to work, and it additionally puts some of the responsibility for the acquisition of a job on the worker.

11. The opposition to the labor market definition is based on misunderstandings. We have established a priority which starts with the area of residence, then the area of last employment, then the State of Alaska, and finally other states. We do not understand the concerns.

12. We have modified this section to include Certified Rehabilitation Counselors. It is the desire of the committee that these specialists be professionals in the area of vocational rehabilitation. That is not the case currently and as a result, both the employee and the employer suffer.

13. See number 6 above.

14. It is the desire of the committee to see that the employee is provided good quality medical care in a timely, efficient manner. Abuses currently exist in the system and we believe that our



language will remedy many of the problems. We think that the suggestion that we allow no more than one change within each speciality does not eliminate the problem. The treating physician can still refer the patient to specialists as necessary.

The concerns regarding the definition of treating physician are inappropriate as the concept is part of the current law and does not cause a problem.

15. See 14 above and 16 below.

16. This section of the bill requires that a treatment plan be submitted if continuing and multiple treatments are prescribed. It seems reasonable that both the employee and employer should know what the physician is intending to do and what he anticipates will happen. The limits on the number of visits was based on the recommendations of experts, but we provided an exception when needed. All the physician would need to do is document the need for additional services. Again we were attempting to deal with abuses to the system.

17. The current statute has no limits at all, therefore we have restricted the frequency of the employer IME. We have modified our recommendation to every 60 days thereafter. It should be acknowledged that the employer is restrained by the costs of such IME's which must be borne by the employer. It should also be remembered that in the case of a dispute, the board's IME will determine the outcome.

18. While no one on the committee was aware of any problems in this area, we have added language which should deal with the concerns expressed. We suggest that when medically appropriate, the IME physician should use already existing diagnostic data to make his determination.

19. Our proposal suggests the adoption of a usual and customary fee schedule. Such schedules are normal in health care plans and under the Social Security System. It does not envision a separate schedule for an employee's physician and an employer's physician.

20. This language merely gives the board the authority to administer the act by hiring experts, be they Alaskans or not.

21. We were concerned about the supreme court giving the presumption to the treating physician in cases where evidence clearly suggests that they were in error. Since the board selected IME will be independent, we believe that giving his opinions greater weight is appropriate.

22. We have added gross incompetence to the language. We do not believe that misrepresentation is an appropriate standard and its inclusion will lead to litigation.

02/08/88 15:26 003  
23. We do not understand the constitutionality question on this issue. We believe that this standard is legal.

24. See #1.

25. See #2.

26. See #11.

27. It is our belief that if a person has skills which can be used in the job market, they are not a permanent total disability.

28. We have added language which will clarify our intent. We are suggesting that after two years, a person be tested to determine their degree of impairment and given a lump sum settlement.

29. It is our desire to pay more money for severe injuries and less money for less severe injuries. We have attempted to do so without increasing the overall costs of this section.

30. Medical stability in this section is essential to determine the timing and the degree of permanent impairment. Medical benefits are not limited and will continue for the duration of the injury.

31. This section currently exists as Section 210 of the Statute. We merely moved it to section 200 since it now only applies to that section.

32. We did not receive Attachment 3, so we are unclear as to their concerns.

33. Vested benefits were used to make this section manageable and to recognize that a worker have no legal right to "unvested" benefits. Vesting has nothing to do with union vs nonunion.

34. Workers' compensation was created to deal with work related injuries and should not be seen as the vehicle to address other social goals. The items outlined represent issues that are adequately addressed in other State and Federal statutes.

35. See #30 above.

## OTHER ITEMS

1. Our agenda for 1988 includes a review of the Division of Workers Compensation. We are particularly interested in the timely resolution of a workers' compensation claim and will examine both the delays caused by the system and those caused by the employers or employees attorneys.

2 We believe that our proposal will include system modifications which will result in cost savings of at least 15%. We hope the insurance community will concur and ask for a rate reduction effective July 1.

3. Issues regarding the insurance industry were not addressed in this bill because of the complexity of the problem. We will be addressing these issues in 1988.

4 This problem is particularly difficult since the courts have held that the contractors insurance carrier is liable when the sole-proprietor has a work related injury. The insurance company takes the position that they need to collect premiums to cover the risk and accordingly charge the contractor

5. Final billing after audit is necessary to make sure that adequate premiums are collected for the actual wage exposure. Quotes given at the initiation of the policy are based on the employers estimates of wages by classification, and if accurate will result in no additional premiums. Unless insurance companies are given the ability to audit payroll records, everyone will underestimate payroll and the system will become even more chaotic.

6. We will examine this when we examine the insurance company, but an "all states rider" does not eliminate the Alaska rates. They will be charged during the audit on the policy. We believe that the problem comes from misrepresenting and misclassifying payroll and the insurance carrier not catching the problem at audit.

7 We would have no problem with such an amendment to the unemployment law.

## SUGGESTED CHANGES TO LEGISLATION

- Page 2, Line 4       The department shall [may] adopt [identical]
- Page 2, line 7       , and shall [may]
- Page 13, Line 5       commencement of such ...
- Page 13, line 24     board When medically appropriate, the IME physician should use already existing diagnostic data to make his determination.
- Page 14, line 22     board. In no event shall the injured worker be responsible for any fees in excess of those determined by the board.
- Page 15, Line 4       treatment, the ability to enter a re-employment services plan,
- Page 15, Line 16     fraud, or gross incompetence.
- Page 18, Line 29     or death [for a recipient residing in the state]
- Page 19, Line 7       wages If the employer can verify that the employees spendable weekly wage is less than \$154, the employer can pay the lesser amount without board order.
- Page 19, line 20     cost of living index of the state [locality]
- Page 19, line 21     cost of living index of Alaska [the state]
- Page 19, Line 25     if the gross [average] weekly earnings [wage]
- Page 20, Line 5       for Alaska [the state] and other states [localities]
- Page 20, line 19     the state of Alaska or the state of residence.
- Page 21, Line 27     percent. If an injury cannot be rated by use of the American Medical Association Guides, the Manual for Orthopedic Surgeons may be used.
- Page 21, Line 29     supplemental recognized schedule.
- Page 22, line 19     stability [ , unless otherwise provided under AS 23 30 041.]
- Page 27, line 4     APPLICABILITY. Except for sections 5, 19, 20, and 21, this

\* Sec. 3. AS 23.30.005 is amended by adding a new subsection to read:

(m) If a regulation adopted by the department and approved by a majority of the full board is determined to be invalid by the state supreme court, the department may adopt new regulations that conform to the department's statutory authority as interpreted by the court. These new regulations shall apply both retrospectively and prospectively.

\* Sec. 5. AS 23.30.041 is repealed and reenacted to read:

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

(b) The reemployment services administrator shall perform the following functions:

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

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

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

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

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

*REV. 2/8/88*

section for the previous fiscal year; the report must include a statistical summary of all rehabilitation cases, including

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

(B) the estimated and actual time of each rehabilitation plan;

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

(D) the cost of reemployment preparation services;

(6) maintain a list of rehabilitation specialists meeting the qualifications established in this section;

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

(c) If an employee suffers a compensable injury that may permanently preclude an employee's return to the employee's occupation at the time of injury, the employee or employer may request an eligibility evaluation for reemployment benefits. The employee must request an eligibility evaluation within 90 days after the employee gives the employer a notice of injury unless the reemployment services administrator determines the employee has unusual and extenuating physical limitations that prevent the employee from making a timely request. The reemployment services administrator shall, on a rotating and geographic basis, select a rehabilitation specialist from the list maintained under (b)(6) of this section to perform the eligibility evaluation.



(d) Within thirty days after the referral by the administrator, the rehabilitation specialist shall perform the eligibility evaluation and issue a report of findings. The reemployment services administrator may grant up to an additional 30 days for performance of the eligibility evaluation upon notification of unusual and extenuating circumstances and the rehabilitation specialist's request. Within 14 days after receipt of the report from the rehabilitation specialist, the reemployment services administrator will notify the parties of the employee's eligibility for reemployment preparation services. Within 10 days after the decision, either party may seek review of the decision by requesting a hearing under AS 23.30.110. The hearing shall be held within 30 days after it is requested. The board shall uphold the decision of the administrator except for abuse of discretion on the administrator's part.

(e) An employee shall be eligible for benefits under this section upon the employee's written request and by having a physician predict that the employee has permanent physical capacities that are less than the physical demands of the employee's job as described in the United States Department of Labor's "Selected Characteristics of Occupations Defined in the Dictionary of Occupational Titles" for

- (1) the employee's job at the time of injury; and
- (2) other jobs that exist in the labor market that the employee has held or received training for within 10 years before the injury or that the employee has held following the injury for a period long enough to obtain the skills to compete in the labor market, according to specific vocational preparation codes as described in the dictionary of occupational titles.

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

(1) the employer offers employment within the employee's predicted post-injury physical capacities at a wage equivalent to at least 60% of the employee's gross hourly wages at the time of injury and the employment prepares the employee to be employable in other jobs that exist in the labor market;

(2) the employee has been previously rehabilitated in a former workers' compensation claim and returned to work in the same or similar occupation, in terms of physical demands, as the employee held at the time of the prior injury; or

(3) at the time of medical stability no permanent impairment is identified or expected.

(g) Within 10 days after the employee receives the reemployment services administrator's notification of eligibility for services, the employee shall notify the employer in writing of his selection of a rehabilitation specialist who shall provide a complete reemployment services plan. If the employer disagrees with the employee's choice of rehabilitation specialist to develop the plan and the disagreement cannot be resolved, then the reemployment services administrator shall assign a rehabilitation specialist. The employer and employee each have one right of refusal of a rehabilitation specialist.

(h) Within 90 days after the rehabilitation specialist's selection in (g) of this section, a reemployment plan must be formulated and approved. The reemployment plan must contain at least the following:

- (1) an occupational goal in the labor market;
- (2) a plan to acquire the occupational skills to be employable;

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

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

(5) the date the plan will commence; and

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

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

(1) on the job training;

(2) vocational training;

(3) academic training;

(4) self-employment; or

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

(j) The employee, rehabilitation specialist, and the employer shall sign the reemployment services plan. If the employer and employee fail to agree on a reemployment plan, either party may submit a reemployment plan for approval to the reemployment services administrator; the reemployment services administrator shall approve or deny a plan within 14 days after the plan is submitted. Within 10 days after the administrator files the decision, either party may seek review of the decision by requesting a hearing under AS 23.30.110. The standards and time periods allowed for review are the same as those in (d) of this section.

(k) Benefits related to the reemployment plan may not extend beyond two years from the date of plan acceptance or approval, at which time benefits expire. If an employee reaches medical stability before completion of the plan, temporary total disability benefits

shall cease and permanent impairment benefits shall then be paid at the employee's temporary total disability rate. If the employee's permanent impairment benefits are exhausted before the completion or termination of the reemployment plan, the employer shall provide wages equal to 60% of the employee's spendable weekly wages but not to exceed \$525, until the completion or termination of the plan. A permanent impairment benefit remaining unpaid upon the completion or termination of the plan shall be paid to the employee in a single lump sum. The fees of the rehabilitation specialist or rehabilitation professional shall be paid by the employer and may not be included in determining the cost of the reemployment plan.

(l) The cost of the reemployment plan, not including the fees of the rehabilitation specialist or the benefits provided in (l) of this section, shall be the responsibility of the employer, but may not exceed \$10,000.

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

(n) After the employee has elected to participate in reemployment benefits, noncooperation by the employee shall result in the termination of reemployment benefits on the date of noncooperation. Noncooperation means but shall not be limited to, failure to

- (1) keep appointments;
- (2) maintain at least average grades;
- (3) attend designated programs;
- (4) maintain contact with the rehabilitation specialist;

(5) cooperate with the rehabilitation specialist in developing a reemployment plan and participating in activities relating to reemployment of a full-time basis;

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

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

If the employer believes the employee has not cooperated, it may terminate reemployment services and wages under (1) of this section. However, upon the request of either party, the reemployment services administrator shall decide whether the employee cooperated. A hearing before the administrator shall be held within 30 days after it is requested. The administrator shall issue a decision within 14 days after the hearing. Within 10 days after the administrator files the decision, either party may seek review of the decision by requesting a hearing under AS 23.30.110. The standards and time periods allowed for review are the same as those in (d) of this section.

(o) In this section

(1) "employability" means possessing the ability but not necessarily the opportunity to engage in employment that is consistent with the employee's physical limitations resulting from the compensable injury.

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

- (A) area of residence;
- (B) area of last employment;
- (C) the state;
- (D) other states.

(3) "physical capacities" means objective and measurable physical traits such as ability to lift and carry, walk, stand or sit, push, pull, climb, balance, stoop, kneel, crouch, crawl, reach, handle, finger, feel, talk, hear, or see.

(4) "physical demands" means the physical requirements of the job such as strength, including positions such as standing, walking, sitting, and movement of objects such as lifting, carrying, pushing, pulling, climbing, balancing, stooping, kneeling, crouching, crawling, reaching, handling, fingering, feeling, talking, hearing, or seeing.

(5) "rehabilitation specialist" means a person who is a certified insurance rehabilitation specialist, a certified rehabilitation counselor or a person who has equivalent or better qualifications as determined under regulations adopted by the department.

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

\*Section 18. AS 23.30.155(c) is amended to read:

(c) The carrier or independent adjuster [EMPLOYER] shall notify the board and the employee on a form prescribed by the board that the payment of compensation has begun or has been increased, decreased, suspended, terminated, resumed, or changed in type. An initial report shall be filed with the board and sent to the employee within 28 days



after the date of issuing the first payment of compensation. If at any time 21 days or more pass and no compensation payment is issued, a report notifying the board and the employee of the termination or suspension of compensation shall be filed with the board and sent to the employee within 28 days after the date the last compensation payment was issued. A report shall also be filed with the board and sent to the employee within 28 days after the date of issuing a payment increasing, decreasing, resuming, or changing the type of compensation paid. If the [EMPLOYER FAILS TO NOTIFY THE] board and the employee are not notified with the 28 days prescribed by this subsection for reporting, the carrier or independent adjuster [EMPLOYER] shall pay a civil penalty of \$100 for the first day plus \$10 for each day thereafter that [THE EMPLOYER FAILED TO GIVE] notice was not given. Total penalties under this subsection [SECTION] may not exceed \$1,000 for a failure to file a required report. Penalties assessed under this subsection are due and payable and eligible for reduction under (m) of this section.

\*Section 20. AS 23.30.155(m) is repealed and reenacted to read:

(1) On or before March 1 of each year the carrier or independent adjuster shall file a verified annual report on a form prescribed by the board stating 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.

(2) If the annual report is timely and complete when received by the board and provides accurate information about each category of payments, the commissioner or his designee shall review the timeliness of the carrier or independent adjuster's reports filed during the



preceding year as required by (c) of this section. If the carrier or independent adjuster timely filed at least 99% of the reports for the preceding year, the penalties assessed under (c) of this section shall be waived. If the carrier or independent adjuster timely filed at least 97%, of the reports for the preceding year, 75% of the penalties assessed under (c) of this section shall be waived. If the carrier or independent adjuster timely filed 95% of the reports for the preceding year, 50% of the penalties assessed under (c) of this section shall be waived. If the carrier or independent adjuster's reports for the preceding year were not timely filed at least 95% of the time, none of the penalties assessed under (c) of this section shall be waived. The penalties that are not waived shall be due and payable within 28 days after the Commissioner of Labor mails the notice of the penalties due.

(3) If the annual report is not filed by March 1 of each year, the carrier or independent adjuster shall pay a civil penalty of \$100 for the first day plus \$10 for each day thereafter.

(4) If the payment under (2) of this subsection is not paid timely, the carrier or independent adjuster shall pay a civil penalty of 20% of the penalties due plus interest at the rate prescribed by AS 45.45.010.

\*Section 21. AS 23.30.155 is amended by adding a new subsection to read:

(n) If the employer does not have a carrier or independent adjuster, (c) and (m) of this section apply to the employer.

NOTE: ALL SUBSEQUENT SECTIONS SHOULD BE RENUMBERED.

\*\*\*\*\*  
\* DELIVER TO: LIOCROG \*  
\* \* \* \* \*  
\* ORIGINAL \*  
\* SENT: 01/19/88 TIME: 15:54 \*  
\* FROM: LTCCSOL \*  
\* SUBJECT: AUDIO PROBLEMS \*  
\* PRINT DATE: 01/19/88 TIME: 15:54 \*  
\* \* \* \* \*  
\*\*\*\*\*

ROGER.

MY PARTICIPANTS STATE THEY CANNOT HEAR THE QUESTIONS ASKED. THEY SAY IT SEEMS LIKE THE PERSONS ASKING THE QUESTIONS ARE NOT CLOSE ENOUGH TO THEIR MIKES OR THE MIKES ARN'T WORKING. WHAT DO YOU THINK?

VESTA IN SOLDOTNA

*Rep. Donley, could you ask  
Members to use mikes for questions  
thanks -*

LOS ANGELES TIMES

# Classified Ads

LOS ANGELES TIMES

CIRCULATION 1,103,656 DAILY / 1,368,105 SUNDAY

SUNDAY, OCTOBER 12, 1980

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- ★ Depressed? ★
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PSYCHOLOGICAL  
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TELECONFERENCE PARTICIPATION

SPONSOR JOINT (H&S) LABOR AND COMMERCE

DATE/TIME 1-19-88 TUESDAY

SUBJECT WORKER'S COMPENSATION

LIO'S

(moderator)

	TESTIFY	OBSERVE	TESTIFY	OBSERVE
ANCHORAGE ( DAVID )	1 Person		PETERSBERG *	( )
BARROW *	( )		SITKA	( )
BETHEL ( )			SOLDOTNA ( VESTA )	1 PERSON
DELTA JUNCTION *	( )		VALDEZ *	( )
DILLINGHAM *	( )		LTC'S	
FAIRBANKS ( FRAN )	3 PERSONS		HOMER	
GLENNALLEN *	( )		WRANGELL	
JUNEAU ( )			OFFNETS	
KETCHIKAN ( BONNIE )	1 Person		OFF1	
KODIAK ( )			OFF2	
KOTZEBUE ( )			OFF3	
MAAT-SU ( )			OFF4	
NONE ( )			OFF5	
			OFF6	

PTS'S ON BACK

\* SESSION ONLY

# **CORRECTION**

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

TELECONFERENCE PARTICIPATION

SPONSOR JOINT (H'S) LABOR AND COMMERCIAL

DATE/TIME 1-19-88 TUESDAY

SUBJECT WORKER'S COMPENSATION

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DILLINGHAM *	( )	LTC'S	
FAIRBANKS ( FRAN )	3 PERSONS	HOMER	
GLENNALLEN *	( )	WRANGELL	
JUNEAU ( )		OFFNETS	
KETCHIKAN ( BESSIE )	1 Person	OFF1	
KODIAK ( )		OFF2	
KOTZEBUE ( )		OFF3	
MAT-SU ( )		OFF4	
NONE ( )		OFF5	
		OFF6	

VTS'S ON BACK

\* SESSION ONLY

VTS'S	W	U	O	TOTAL		W	U	O	TOTAL
AMB - AMBLER					MET - METLAKATLA				
ANA - ANAKTUVUK PASS					MOS - MOSQUITO LAKE				
AND - ANDERSON					NAK - NAKNEK				
ANG - ANGOON					NEN - NENANA				
CAN - CANTWELL					NEW - NEWHALEN				
CHS - CHISTOCHINA					NIK - NIKISKI				
CHI - CHITINA					NOR - NOORVIK				
COP - COPPER CENTER					NOT - NORTH TONSINA				
COR - CORDOVA					NOW - NORTHWAY				
CRA - CRAIG					PEL - PELICAN				
DOT - DOT LAKE					PTH - POINT HOPE				
EAG - EAGLE					SAV - SAVOONGA				
FTY - FT. YUKON					SDP - SAND POINT				
GAK - GAKONA					SEW - SEWARD				
GAL - GALENA					SLW - SELAWIK				
GAM - GAMBELL					SHS - SHISHMAREF				
HNS - HAINES					SLA - SLANA				
HEA - HEALY					SKG - SKAGWAY				
HOO - HOONAH					STP - ST. PAUL				
HPB - HOOPER BAY					TOG - TOGIAK				
HYD - HYDABURG					TOK - TOK				
KAK - KAKE					OOK - TOOKSOOK				
KAT - KAKTOVIK					UAK - UNALASKA				
KEN - KENNY LAKE					UNK - UNALAKLEET				
KLA - KLAWOCK					WAI - WAINWRIGHT				
MEN - MENTASTA					YAK - YAKUTAT				



HB

368

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y - STATE CAPITOL  
JUNEAU, ALASKA 99811  
907-465-3800

LEGISLATIVE AFFAIRS AGENCY  
LEGISLATIVE REFERENCE LIBRARY

May, 1988

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

House L<sup>3</sup>C

March 22, 1988

March 24, 1988

March 29, 1988

# HOUSE COMMITTEE REPORT

(7)

Date referred: 1/18/88

FURTHER REFERRALS:

HESS  
Finance

DATE: 3/29/88

The Labor & Commerce Committee has considered HB 368

"An Act exempting certain persons from the requirement to be licensed as an occupational therapist or occupational therapy assistant; and providing for an effective date."

**RECOMMENDS:**

- replace with CS HB 368 (LTC)  the same title
- attached amendment(s)  a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the \_\_\_\_\_ Committee

**ADOPTS:**  \_\_\_\_\_ letter of intent

**ATTACHES NEW FISCAL NOTE(S):**

- fiscal impact  same as previous fiscal note published \_\_\_\_\_
- zero fiscal note  same as previous zero fiscal note published 1/18/88
- zero with analysis

**SIGNING DO PASS:**

**SIGNING OTHER RECOMMENDATIONS:**

John Ellis  
Chip Davidson  
Scott Wimmer  
Nick Kozan

Dave Douley (NO REC)  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
Dave Douley  
 Chairman's signature

RECEIVED  
FEB 1 1987

6  
FYI

January 24, 1988

8159 Erin  
Juneau, Alaska 99801

Reference: HB 368

The Honorable David Donnely  
Chairman, Labor and Commerce Committee  
Alaska State House of Representatives  
Alaska State Capitol Building  
Juneau, Alaska

Dear Mr. Donnely:

I am a Registered Occupational Therapist. This means that I have completed a Bachelor of Science Degree in Occupational Therapy from a University program which has been accredited by the American Occupational Therapy Association and the Council on Medical Education of the American Medical Association, and have passed the AOTA Registration Examination covering all areas of O.T. practice. My course of study in college was divided between O.T. theory, neurology, anatomy, physiology, pathology, kinesiology, psychology, and treatment media courses. In addition to course work I completed a series of full-time clinical affiliations consisting of two months training in pediatrics at Childrens Medical Center in Tulsa, Oklahoma, three months at the Arizona State Psychiatric Hospital in Phoenix, two months in general medicine at the Veteran's Administration Hospital in Houston, Texas, and three months in physical medicine and rehabilitation at the VA's east coast spinal cord injury center in the Bronx, New York.

I have had twelve years of employment experience in the position of Registered Occupational Therapist, including five years in Day Treatment Centers for multi-handicapped children, one as a contract therapist for the Southeast Regional Resource Center to the Lower Kuskokwim School District, and am currently employed as an O.T. for the Juneau School District. I feel that my training and experience has been extensive and vital to my present position. My knowledge not only includes methods for treating various disabilities, but equally important, an awareness of practices to be avoided.

As an Occupational Therapist for the school district, I administer standardized testing and use clinical observation to determine a student's eligibility for treatment and program planning. I prepare goals and objectives for the student which become a part of the individual educational plan, or IEP. I consult with classroom and resource teachers and other administrative and special education personnel for the coordination of the student's education. I prepare initial reports, maintain progress notes, complete annual reviews and reevaluations for children receiving services. I go to

four schools in the district - two a day, see a different child each half hour, and make equipment available to carry out an appropriate activity or exercise for each child. If it were not for my training as an Occupational Therapist plus additional study in the areas of practice encountered in the school population and keeping abreast of O.T. issues, I would not be able to do my job.

During the last session of the Alaska Legislature an Act was passed which created a licensure procedure and board for Occupational and Physical Therapists. I have gone through the necessary steps to become licensed under this act.

The Department of Education for the State of Alaska has now taken it upon themselves to write a bill and has been successful in having it introduced by the Governor's Rules Committee into the House of Representative as HB 368. Although this document is less than two pages in length, it in effect waives all the requirements used to designate an Occupational Therapist as outlined in the Occupational Therapy Licensure Bill from applying to the schools. By their action the Department of Education felt that they could save a great deal of money and still be in compliance with Federal Guidelines if they got a law passed that made it legal to allow any school employee to provide occupational therapy services. The dangers inherent in this tactic are damaging both to the children serviced and to the occupational therapy profession.

HB 368 as written by the Department of Education is not only dangerous, it is unnecessary. It was in part created because of their mininterpretation of Federal Laws and the OT Licensure Act, as well as a lack of knowledge of accepted practices in other states. The American Occupational Therapy Association has long realized that there will be rural areas where children are in need of O.T. services but where a registered O.T. is not available on site, and that under such circumstances a therapist can designate activities or exercises to be carried out by another person. The therapist, however, will have evaluated the child, outlined the program, and provided training to the service provider. The person working with the child on a day to day basis may not call himself an occupational therapist nor the services given occupational therapy. This practice is now in effect in many rural communities of Alaska through agencies providing contract therapists to the school district. The DOE bill, however, opens up the possibility of having untrained and unsupervised personnel operating in the capacity of an O.T. when they have no knowledge of either the scope of O.T. or the appropriate treatment or precautions for an individual student. This, indeed, would save the schools money, and because it would, it has the ability to become a widespread practice.

If time allowed, the horror stories of damage done to children by unqualified personnel would be the most convincing argument against HB 368. For now, due to the urgency of the situation and the manner

by which the Department of Education has chosen to trim their costs at the expense of a profession and the children of the state of Alaska, I would ask you to use your influence and your vote to assure that this harmful legislation is carefully investigated and hopefully defeated. Your consideration of this bill is greatly needed and appreciated.

Sincerely,

*Deborah J. Anderson*

Deborah J. Anderson, OTR  
Occupational Therapist

POSITION PAPER  
HOUSE BILL NO. 368

"An Act exempting certain persons from the requirement to be licensed as an occupational therapist or occupational therapy assistant; and providing for an effective date."

EFFECT OF BILL

This bill would exempt government employees and educational institution employees who provide occupational therapy services from the licensing requirement in Chapter 2, FSSLA 1987.

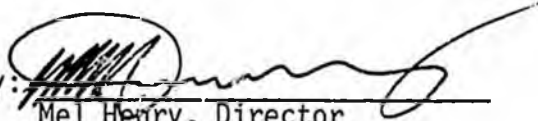
DISCUSSION

Such an exemption is necessary because many activities falling under the overly broad definition of "occupational therapy" in Chapter 2 are performed by personnel who have no formal occupational therapy training. If licensed personnel were required for these activities, many of the services would not be performed. Occupational therapists with formal training are in short supply. The most efficient way to provide the services is to use other personnel for provision of the less complex activities falling under the definition of "occupational therapy" in Chapter 2, FSSLA 1987. Without the exemption contained in this bill, that would not be possible.

RECOMMENDATION

The Department of Health and Social Services supports the passage of HB 368.

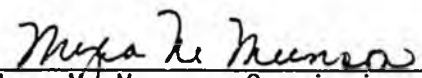
Recommended by:

  
Mel Henry, Director

Date:

20<sup>th</sup> January, 1988

Approved by:

  
Myra M. Munson, Commissioner

Date:

Feb 9, 1988



FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_  
Title: "An Act exempting certain persons  
. . . occupational therapist . . ."  
Sponsor: Rules  
Requestor: Governor

Agency Affected: Health & Social Services  
BRU: Institutions and Administration  
Components: API, Harborview

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME	-0-	-0-	-0-	-0-	-0-	-0-
TEMPORARY	-0-	-0-	-0-	-0-	-0-	-0-

ANALYSIS : (Attach a separate page if necessary)

The enactment of HB 368 would have no direct fiscal impact on the Department of Health and Social Services.

Prepared by: Mel Henry, Director  
Division: Mental Health & Developmental Disabilities

Phone: 465-3370  
Date: 1/21/88

Approved by Commissioner: Myra M. Munson  
Agency: Health & Social Services

Date: 2-9-88

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

G

**PHYSICAL  
THERAPY  
CENTER**

Beth Hansen, LPT

Denice A.B. McPherson, LPT

789-4880

February 19, 1988

RECEIVED  
FEB 22 1987

Rep. Dave Donley, Chairman  
House Commerce Committee  
P. O. Box 5  
Juneau, Alaska 99811

Dear Representative Donley,

I would like to express my concern regarding HB 368. This bill proposes that occupational therapy done in the school system be done by a non-licensed person. The requirements of licensing are not at all exclusive; so there is no rational reason why any Occupational Therapist would avoid the process. Therefore, the intent of this legislation is to allow untrained persons to perform therapy skills. There is only one reason to explain this move: saving money by having therapy performed by nonqualified persons.

The duties required of the Physical Therapists and Occupational Therapists in the school system often involve severely handicapped children. The skills used in this type of treatment are now being recognized as a sub-speciality in both professions.

I am an orthopedically oriented Physical Therapist and have practiced therapy in the hospital and clinical setting for 12 years. To convert to the practice of neurologically involved pediatrics would involve at least a year of education to upgrade my skills in that area.

I would hate to think of these special children being given less than adequate treatment by an unskilled person. I am concerned for the parents who will think that their children are being treated by a professional.

I also recommend that the legislature be sure that this would not be a violation of the Federal government requirement in public law 94-142.

Sincerely,

*Beth Hansen*  
Beth Hansen, LPT

BH:1w



6

# AKOTA Alaska Occupational Therapy Association

3605 Arctic Blvd. #1616, Anchorage, Alaska 99503  
(907) 345-0034

February 2, 1988

Representative Dave Donley, Chairman  
Labor and Commerce Committee  
House of Representatives  
P.O. Box V  
Juneau, Ak 99801

RECEIVED  
FEB 9 1988

Dear Representative Donley:

The Alaska Occupational Therapy Association is strongly opposed to passage of HB 368. This bill would allow schools and governmental units, to employ persons to perform occupational therapy services without meeting qualifications for the practice of occupational therapy as defined in Alaska statutes.

Passage of this bill would allow consumers to receive treatment which is substandard and harmful. Consumers, including handicapped students, psychiatric patients, and developmentally disabled persons, in Alaska do not deserve less than qualified service providers.

To allow untrained, unqualified persons to say they are delivering occupational therapy services is certainly not in the best interest of the State of Alaska.

Please, consider the effect the passage of this bill would have on the health care consumers in Alaska.

The Alaska Occupational Therapy Association is eager to assist the Labor and Commerce Committee, the Department of Education or the Office of the Governor in understanding the potential effect of this bill. We are also willing to assist with any potential difficulties in the practice of occupational therapy. House Bill 368 must not be supported because it would allow unqualified persons to deliver occupational therapy services.

Sincerely,

Mary Melissa Robinson, OTR  
President, Ak.O.T.A.

February 9, 1988

RECEIVED  
FEB 16 1988

Labor & Commerce Committee Members  
PO Box V  
Juneau, AK 99811

Dear Labor & Commerce Committee Members:

*Rep. Jane Stacey*

I am writing to you for my concerns of HB 368 introduced by Governor Cowper to exempt government units and educational institutions from occupational therapy licensure. Passage of this bill would mean occupational therapists and certified occupational therapy assistants working for school districts and state agencies would not have to be qualified or meet the qualifications for licensure.

I work at Alaska Psychiatric Institute with many chronic and acutely ill schizophrenic patients. These patients don't usually have the abilities to distinguish whether a therapist is qualified or not. Even if they did several are committed and they don't usually have a choice of leaving API to seek a more qualified therapist.

Before API, I worked at Hope Cottages with the same children who receive occupational therapy in the schools. I was often called upon to consult and teach caregivers on how to feed a profoundly retarded, multiply handicapped child who couldn't swallow properly and choked on each bite of food that was given him. I ask you - can this child distinguish between a qualified and unqualified occupational therapist? Can he choose who will give advice on how he's to be fed? Passage of HB 368 would allow consumers of governmental and educational units to receive substandard service. Is this the pride we take in our State services?

The Department of Education has voiced many concerns that the occupational therapy licensure law prohibits any person who may be involved in any aspect of the occupational therapy definition from performing their work. The Alaska Occupational Therapy Association believes the purpose of the law is not to limit qualified professionals from practicing what they are qualified to practice as long as it is not represented as occupational therapy. Any clarification of this law could have been appropriately handled with regulations. There are several alternatives that could have handled the Department of Education's concerns. Yet, Governor Cowper chose to introduce HB 368 and attach governmental units to the Educational Department's concerns for no apparent reason. I ask you who must know him better than I... I ask you - Why? Why would he choose to introduce a bill that would be so detrimental to the needy people of this State? Why?

The Alaska Occupational Therapy Association has chosen to take a stance of proposing alternative language to HB 368 that will allow teachers and teacher aides to develop daily living, play, leisure, social, and developmental skills as long as such a person does not represent themselves as an occupational therapist.

Page 2  
Carol J. Laurion  
HB 368

I ask you to send a message to the needy people of this State and send a message to Governor Cowper by adopting the Alaska Occupational Therapy Association's language to HB 368 and encouraging your collages to do the same.

Sincerely,

*Carol J. Laurion OTR*

Carol J. Laurion, OTR  
Occupational Therapist Registered

cc: Alaska Occupational Therapy Association  
ASK  
Mental Health Consumers of Alaska  
Alliance for the Mentally Ill



Alaska State Legislature  
House of Representatives  
COMMITTEE ON HEALTH, EDUCATION  
AND SOCIAL SERVICES

OFFICIAL BUSINESS

POUCH V  
JUNEAU, AK 99811  
465-3759

March 2, 1988

RECEIVED  
MAR 5 1988

Ms. Deborah J. Anderson, OTR  
8159 Erin  
Juneau, Alaska 99801

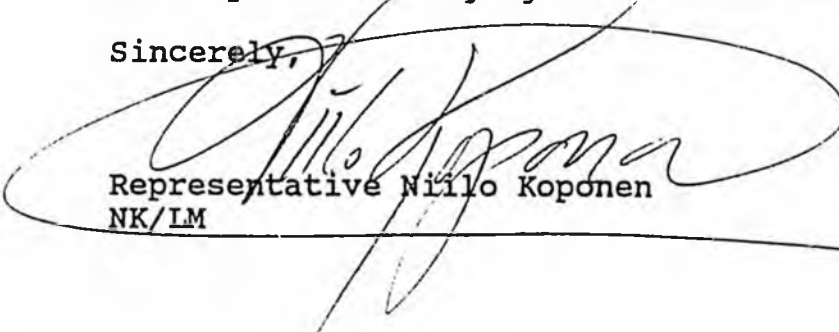
Dear Ms. Anderson:

I am forwarding a copy of your letter of January 24 regarding HB 368 to the House Labor and Commerce Committee Chair, Rep. Dave Donley. The bill remains in that committee and is not scheduled for a hearing. According to Rep. Donley's staff they have received a number of letters in regard to this legislation. If the bill is heard and passes from the House Labor and Commerce Committee, it will then come to the House Health, Education and Social Services Committee.

As it is the second year of the legislative session and the bill has not yet had a hearing in its first committee of referral, it does not appear to have priority status and chances of its passage this session seem slight. Your ongoing attention and vigilance, however, is warranted until May 9.

Thank you for bringing this matter to my attention.

Sincerely,

  
Representative Nillo Koponen  
NK/LM



January 24, 1988

8159 Erin  
Juneau, Alaska 99801

Reference: HB 368

The Honorable Niile Kaponen  
Co-Chairman, Health, Education and  
Welfare Committee  
Alaska House of Representatives  
Alaska State Capitol Building  
Juneau, Alaska 99811

Dear Mr. Kaponen:

I am a Registered Occupational Therapist. This means that I have completed a Bachelor of Science Degree in Occupational Therapy from a University program which has been accredited by the American Occupational Therapy Association and the Council on Medical Education of the American Medical Association, and have passed the AOTA Registration Examination covering all areas of O.T. practice. My course of study in college was divided between O.T. theory, neurology, anatomy, physiology, pathology, kinesiology, psychology, and treatment media courses. In addition to course work I completed a series of full-time clinical affiliations consisting of two months training in pediatrics at Childrens Medical Center in Tulsa, Oklahoma, three months at the Arizona State Psychiatric Hospital in Phoenix, two months in general medicine at the Veteran's Administration Hospital in Houston, Texas, and three months in physical medicine and rehabilitation at the VA's east coast spinal cord injury center in the Bronx, New York.

I have had twelve years of employment experience in the position of Registered Occupational Therapist, including five years in Day Treatment Centers for multi-handicapped children, one as a contract therapist for the Southeast Regional Resource Center to the Lower Kuskoquim School District, and am currently employed as an O.T. for the Juneau School District. I feel that my training and experience has been extensive and vital to my present position. My knowledge not only includes methods for treating various disabilities, but equally important, an awareness of practices to be avoided.

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The Department of Education for the State of Alaska has now taken it upon themselves to write a bill and has been successful in having it introduced by the Governor's Rules Committee into the House of Representative as HB 368. Although this document is less than two pages in length, it in effect waives all the requirements used to designate an Occupational Therapist as outlined in the Occupational Therapy Licensure Bill from applying to the schools. By their action the Department of Education felt that they could save a great deal of money and still be in compliance with Federal Guidelines if they got a law passed that made it legal to allow any school employee to provide occupational therapy services. The dangers inherent in this tactic are damaging both to the children serviced and to the occupational therapy profession.

HB 368 as written by the Department of Education is not only dangerous, it is unnecessary. It was in part created because of their misinterpretation of Federal Laws and the OT Licensure Act, as well as a lack of knowledge of accepted practices in other states. The American Occupational Therapy Association has long realized that there will be rural areas where children are in need of O.T. services but where a registered O.T. is not available on site, and that under such circumstances a therapist can designate activities or exercises to be carried out by another person. The therapist, however, will have evaluated the child, outlined the program, and provided training to the service provider. The person working with the child on a day to day basis may not call himself an occupational therapist nor the services given occupational therapy. This practice is now in effect in many rural communities of Alaska through agencies providing contract therapists to the school district. The DOE bill, however, opens up the possibility of having untrained and unsupervised personnel operating in the capacity of an O.T. when they have no knowledge of either the scope of O.T. or the appropriate treatment or precautions for an individual student. This, indeed, would save the schools money, and because it would, it has the ability to become a widespread practice.

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by which the Department of Education has chosen to trim their costs at the expense of a profession and the children of the state of Alaska, I would ask you to use your influence and your vote to assure that this harmful legislation is carefully investigated and hopefully defeated. Your consideration of this bill is greatly needed and appreciated.

Sincerely,

*Deborah J. Anderson, OTR*

Deborah J. Anderson, OTR  
Occupational Therapist



## Alaska Occupational Therapy Association

3605 Arctic Blvd. #1616, Anchorage, Alaska 99503  
(907) 345-0034

March 24, 1988

Labor & Commerce Committee  
Dave Donley, Chair  
House of Representatives  
Room 17, Capitol  
Juneau, Alaska 99811

Members of the Labor & Commerce Committee:

The Alaska Occupational Therapy Association will favor passage of CS HB 368 only if there is an amendment to page 2 lines 9 and 10. The amendment would be practice occupational therapy (provide independent or unsupervised occupational therapy services.)

It is essential that the statute be clear and that the public not be misled about services which are called occupational therapy.

The Association believes that if CS HB 368 is amended as indicated, the two areas of concern about the occupational therapy licensing act will be covered. It will clarify that schools can continue to utilize programs written by licensed occupational therapists and carried out by teachers and aides; it will clarify the use of activities within the definition of occupational therapy when carried out by other professionals as within the law; and it will continue to protect the Alaskan public by identifying those qualified to practice occupational therapy.

Thank you for your concern and interest in providing Alaskans with services by qualified occupational therapists.

A handwritten signature in cursive script that reads "Mary Melissa Robinson".

Mary Melissa Robinson, OTR/L  
President, Ak.O.T.A.

STEVE COWPER  
GOVERNOR

ce



JHB 368

STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

January 18, 1988

The Honorable Ben Grussendorf  
Speaker of the House  
Alaska State Legislature  
P.O. Box V  
Juneau, AK 99811

Dear Representative Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to the licensing of occupational therapists and occupational therapy assistants. It would exempt certain persons from the new occupational therapist licensing requirements of AS 08.84.150. It would also exempt those same persons from the penalties applicable to those "holding out" as occupational therapists or occupational therapy assistants.

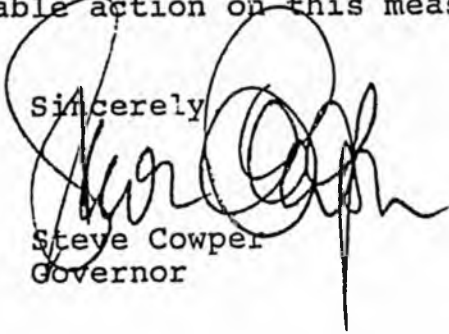
Sections 1 and 2 of the bill exclude those who are exempt from the occupational therapist licensing requirements under sec. 3 of the bill from the misdemeanor penalties otherwise applicable under AS 08.84.130(c) and (d) to persons holding themselves out or practicing as occupational therapists and occupational therapy assistants. These specific exclusions from the "holding out" penalty provisions of AS 08.84.130(c) and (d), are needed because those provisions are aimed at any unlicensed person who "directly or by implication" holds out as a licensee. A person practicing occupational therapy in a school setting could possibly be said to be "holding out by implication" as a licensed therapist or therapy assistant even though the person is exempted from the licensing requirement under sec. 3 of the bill. The exemptions are not broad enough, however, to exempt a person who "holds out" to the public as a licensed occupational therapist or therapy assistant for compensation in addition to the salary the person receives from his or her state or school district employer.

Section 3 of the bill adds to the list of those who are exempt from the licensing requirements of AS 08.84.150, a person employed by a governmental unit or an educational institution who is required to engage in some phase of occupational therapy work, so long as the person does not offer to render occupational therapy services to the public for compensation in addition to the salary received from his or her employer.

Section 4 of the bill provides for an immediate effective date in order to provide relief as soon as possible to school districts and others that are now required under ch. 2, FSSLA 1987, to hire licensed occupational therapists and therapy assistants to perform work that was formerly performed by unlicensed personnel.

I urge your prompt and favorable action on this measure.

Sincerely



Steve Cowper  
Governor

STATE OF ALASKA  
1988 LEGISLATIVE SESSION

BILL VERSION: HB 368  
PUBLISH DATE: HOUSE 1/18/88

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_  
Title: Occupational Therapist  
Sponsor: Rules Committee  
Requestor: Governor

Agency Affected: Education  
BRU: \_\_\_\_\_  
Components: \_\_\_\_\_

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

The bill has no fiscal impact on the department. It will, however, save school districts a significant amount of money.

Prepared by: Steve Hole Phone: 465-2800  
Division: Commissioner's Office Date: 01-04-88  
Approved by Commissioner: [Signature] Date: 01-04-88  
Agency: Education

- Distribution (by preparer):
- Legislative Finance
  - Legislative Sponsor
  - Requestor
  - Office of Management and Budget
  - Impacted Agency(ies)

# St. Jude Center, Inc.

Day Care  
Respite Care  
Special Programs

Therapy  
Education

3272 HOSPITAL DRIVE JUNEAU, ALASKA 99801  
(907) 586-2624 586-2627

March 22, 1988

Representative Dave Donley  
Chairman, House Labor and Commerce Committee  
Alaska State Legislature  
Box V  
Juneau, Alaska 99811

Dear Representative Donely:

As a facility that uses the services of an Occupational Therapist to provide services to developmentally disabled children in our preschool special education program, I feel it very important that those services are prescribed and delivered by licensed occupational therapists.

House Bill 368 that would provide for school districts and other governmental units to develop programs and deliver services seems to open door for the possibility that unqualified persons could in fact practice occupational therapy. For that reason alone I would urge your support in either the modification or defeat of this bill in its present form.

Sincerely,

  
Anne Meeker,  
Director



March 20, 1988

House Labor & Commerce Committee  
P.O. Box 0  
Juneau, AK., 99811

Dear Committee Members,

I am writing in regards to **HB 368**. I am an occupational therapist and am concerned that HB 368 as written will essentially nullify the Occupational Therapy Licensing bill enacted last session. This bill will exempt all occupational therapists working in the school system or any governmental agency from being licensed. Over half the therapists in the state work in these agencies. Out of the four therapists currently working in Juneau, I would be the only one licensed. I would be the only one required to be properly educated in this field and to pass a national test. Only the adults in my city would be protected from having people who are not properly qualified working with them. This bill as worded would leave most of the children in the state unprotected.

Last session the legislature of both houses went to great lengths to provide this protection for all Alaskans even to the extent of overriding the governor's veto. Please do not let HB 368 nullify your good work.

Sincerely,

*Ann Mattson OTR/L*

Ann Mattson OTR/L

To: Dave Donley,  
Labor and Commerce Committee Chairman  
P.O. box V  
Juneau, Alaska 99811

From: Robin Lampman, Legislative Co-Chairperson,  
Alaska Occupational Therapy Association  
Work Address:  
St. Jude Center, Inc.  
3272 Hospital Drive  
Juneau, Alaska 99801  
586-2624 W\* or 780-6082 H\*

Date: 3-21-88

It has come to my attention that **House Bill 368** will be heard, on 3-22-88, by your committee. This bill exempts from the requirements of licensure any person "employed by a governmental unit or an educational institution and is required to engage in some phase of work of an occupational therapy nature in the course of the person's employment, and does not render occupational therapy services to the public for compensation in addition to the salary the person receives from that employment."

Passage of this Bill would mean occupational therapists working for school districts and governmental units (includes state agencies such as Alaska Psychiatric Institute and Harborview and Infant Learning Programs) would not have to be qualified or meet the requirements for licensure. I believe this would not be in the best interest of the consumers in this State and defeats the purpose of licensure as protecting them from unqualified persons attempting to practice occupational therapy.

I would like to provide you with some background information on the concept of licensure of occupational therapists as well as some details on The American Occupational Therapy Association and the professionals it represents. I believe that this information may help answer questions which are often raised by legislators when the subject of professional licensure is discussed.

Occupational therapists are health professionals who specialize in increasing the independence and productivity of people of all ages who are physically, psychologically, or developmentally disabled. They provide rehabilitative services in acute general hospitals, long-term care facilities, community mental health centers, mental retardation centers, psychiatric hospitals, rehabilitation centers, early childhood intervention programs, and in private and public schools.

Over the years, The American Occupational Therapy Association has attempted to protect the public and guarantee the integrity of the profession through the development and maintenance of standards of education, training, and practice. These standards underlie the certification process that the Association attempts to require of anyone who seeks to practice occupational therapy. For persons who choose to meet the requirements imposed by this form of credentialing, the system successfully promotes the provision of quality health care services. The problem arises with those individuals who choose not to participate. Since this system of credentialing is a voluntary one, no effective enforcement procedures are available to prevent unqualified persons from attempting actual practice of occupational therapy, or to prohibit them from representing themselves as bona fide occupational therapists.

I consider individuals with little or no training in the profession that have represented themselves as qualified occupational therapists are providing potential source of serious harm to individuals in need of occupational therapy services. To ensure greater protection for the consuming public, I actively support the **House Bill 205**, "An Act relating to regulation of the practice of occupational therapy and physical therapy; and providing for an effective date." If necessary, I also encourage and support an amendment to **House Bill 368** to change the language, rather than exempting occupational therapists and occupational therapy assistants in educational institutions and governmental units from the requirements of licensure.

Thank you for your efforts in encouraging quality services for Alaskan consumers.

*Robin Lampman, OTR*

Robin Lampman, OTR  
Occupational Therapy



Official Business

**COMMITTEE:**

HOUSE LABOR & COMMERCE

**DATE:** March 29, 1988

**SIGN-IN**

**Subject of meeti**

- HB 457 "An Act relating to assistance program"
- HB 458 "An Act making a s Alaska stabilizat"
- HB 542 "An Act relating to an employer makes business activity entity contracts entity."
- HB 368 "An Act relating to"

PLEASE PRINT  
**NAME & TITLE**

**REPRESENTING**

**ADDRESS & ZIP**

**PHON**

Dave Rose	SELF	4660 Thune Rd	H 586 W 465
Ashley Reed	Hollywood Group	1007 W 3rd Ave #200 Anch AK 99501	H 463 W 279
James Sawick	Dept. of Labor		H W 465
Paul Spruntz	AFL-CIO	124 FIRST ST 300 ... AK	H W 586
Tom			H W
Cherie Stalley	A.P.E.A.	3410 1st Fl ... St ... 99801	H W
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			H W
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Utermohle  
3/14/88

Original sponsor: Rules /Governor

1 IN THE HOUSE

2 CS FOR HOUSE BILL NO. 368 ( )

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act exempting certain persons from the require-  
7 ment to be licensed as an occupational therapist or  
8 occupational therapy assistant; and providing for an  
9 effective date."

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

11 \* Section 1. AS 08.84.150(b) is amended to read:

12 (b) A person may not practice occupational therapy without being  
13 licensed unless the person is14 (1) a student in an accredited occupational therapy program  
15 or in a supervised field work program;16 (2) a graduate of a foreign school of occupational therapy  
17 fulfilling the internship requirement of AS 08.84.032, and then only  
18 unless under the continuous direction and immediate supervision of an  
19 occupational therapist;20 (3) an occupational therapist or occupational therapy  
21 assistant employed by the United States Government while in the dis-  
22 charge of official duties; [OR]

23 (4) granted a limited permit under AS 08.84.075;

24 (5) licensed under this title and uses occupational therapy  
25 skills in the practice of the profession for which the license is  
26 issued; or27 (6) employed as a teacher or teacher's aide by an educa-  
28 tional institution and is required to use occupational therapy skills  
29 during the course of employment, if

1                   (A) the occupational therapy skills are used under a  
2 program implemented by the employer and developed in consultation  
3 with a licensed occupational therapist;

4                   (B) the employer maintains direct supervision of the  
5 person's use of occupational therapy skills; and

6                   (C) the person does not represent to be an occupa-  
7 tional therapist or occupational therapy assistant.

8 \* Sec. 2. AS 08.84.190(3) is amended to read:

9                   (3) "occupational therapy" means, for compensation, the use  
10 of purposeful activity, evaluation, treatment, and consultation with  
11 human beings whose ability to cope with the tasks of daily living are  
12 threatened with, or impaired by developmental deficits, learning  
13 disabilities, aging, poverty, cultural differences, physical injury or  
14 illness, or psychological and social disabilities to maximize indepen-  
15 dence, prevent disability, and maintain health; "occupational therapy"  
16 includes

17                   (A) developing daily living, play, leisure, social,  
18 and developmental skills;

19                   (B) facilitating perceptual-motor and sensory inte-  
20 grative functioning;

21                   (C) enhancing functional performance, prevocational  
22 skills, and work capabilities using specifically designed exer-  
23 cises, therapeutic activities and measure, manual intervention,  
24 and appliances;

25                   (D) design, fabrication, and application of splints or  
26 selective adaptive equipment;

27                   (E) administering and interpreting standardized and  
28 nonstandardized assessments, including sensory, manual muscle,  
29 and range of motion assessments, necessary for planning effective

1 treatment; and

2 (F) adapting environments for the disabled;

3 \* Sec. 3. This Act takes effect immediately under AS 01.10.070(c).

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go0068hX  
Utermohle  
3/23/88

Original sponsor: Rules /Governor

1 IN THE HOUSE

BY THE LABOR AND  
COMMERCE COMMITTEE

2 CS FOR HOUSE BILL NO. 368 (L&C)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act exempting certain persons from the require-  
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12 (b) A person may not practice occupational therapy without being  
13 licensed unless the person is

14 (1) a student in an accredited occupational therapy program  
15 or in a supervised field work program;

16 (2) a graduate of a foreign school of occupational therapy  
17 fulfilling the internship requirement of AS 08.84.032, and then only  
18 unless under the continuous direction and immediate supervision of an  
19 occupational therapist;

20 (3) an occupational therapist or occupational therapy  
21 assistant employed by the United States Government while in the dis-  
22 charge of official duties; [OR]

23 (4) granted a limited permit under AS 08.84.075;

24 (5) licensed under this title and uses occupational therapy  
25 skills in the practice of the profession for which the license is  
26 issued; or

27 (6) employed as a teacher or teacher's aide by an educa-  
28 tional institution and is required to use occupational therapy skills  
29 during the course of employment, if

1                   (A) the occupational therapy skills are used under a  
2 program implemented by the employer and developed by a licensed  
3 occupational therapist;

4                   (B) the employer maintains direct supervision of the  
5 person's use of occupational therapy skills; and

6                   (C) the person does not represent to

7                   (i) be an occupational therapist or occupational  
8 therapy assistant; and

9                   (ii) provide independent or unsupervised occupa-  
10 tional therapy services.

11 \* Sec. 2. AS 08.84.190(3) is amended to read:

12                   (3) "occupational therapy" means, for compensation, the use  
13 of purposeful activity, evaluation, treatment, and consultation with  
14 human beings whose ability to cope with the tasks of daily living are  
15 threatened with, or impaired by developmental deficits, learning  
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18 dence, prevent disability, and maintain health; "occupational therapy"  
19 includes

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21 and developmental skills;

22                   (B) facilitating perceptual-motor and sensory inte-  
23 grative functioning;

24                   (C) enhancing functional performance, prevocational  
25 skills, and work capabilities using specifically designed exer-  
26 cises, therapeutic activities and measure, manual intervention,  
27 and appliances;

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(E) administering and interpreting standardized and nonstandardized assessments, including sensory manual muscle, and range of motion assessments, necessary for planning effective treatment; and

(F) adapting environments for the disabled;

\* Sec. 3. This Act takes effect immediately under AS 01.10.070(c).

go0068hX

Utermohle  
3/25/88

Original sponsor: Rules /Governor

BY THE LABOR AND  
COMMERCE COMMITTEE

1 IN THE HOUSE

2 CS FOR HOUSE BILL NO. 368 (L&amp;C)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEFNTH LEGISLATURE - SECOND SESSION

5 A BILL

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17 fulfilling the internship requirement of AS 08.84.032, and then only  
18 unless under the continuous direction and immediate supervision of an  
19 occupational therapist;20 (3) an occupational therapist or occupational therapy  
21 assistant employed by the United States Government while in the dis-  
22 charge of official duties; [OR]

23 (4) granted a limited permit under AS 08.84.075;

24 (5) licensed under this title and uses occupational therapy  
25 skills in the practice of the profession for which the license is  
26 issued; or27 (6) employed as a teacher or teacher's aide by an educa-  
28 tional institution and is required to use occupational therapy skills  
29 during the course of employment, if

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3 occupational therapist;

4                   (B) the employer maintains direct supervision of the  
5 person's use of occupational therapy skills; and

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7                   (i) be an occupational therapist or occupational  
8 therapy assistant; and

9                   (ii) practice occupational therapy.

10 \* Sec. 2. AS 08.84.190(3) is amended to read:

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12 of purposeful activity, evaluation, treatment, and consultation with  
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nonstandardized assessments, including sensory, manual muscle, and range of motion assessments, necessary for planning effective treatment; and

(F) adapting environments for the disabled;

\* Sec. 3. This Act takes effect immediately under AS 01.10.070(c).

# **CORRECTION**

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





Official Business

**COMMITTEE:**

HOUSE LABOR & COMMERCE

**DATE:** March 29, 1988

**SIGN-IN**

**Subject of meeting:**

- HB 457 "An Act relating to the Alaska stabilization assistance program." WORK SESSION
- HB 458 "An Act making a special appropriation to the Alaska stabilization assistance fund." WORK SESSION
- HB 542 "An Act relating to employer obligations when an employer makes a substantial change in a business activity or when a governmental entity contracts certain activities to a private entity."
- HB 368 "An Act relating to occupational therapists."

PLEASE PRINT  
**NAME & TITLE**

**REPRESENTING**

**ADDRESS & ZIP**

**PHONE**

**DO YOU WANT TO TESTIFY?**

**SUBJECT: BILL #**

Dave Rose	SELF	4660 Thune Rd	H 586-4892 W 465-2047	Yes	457
Ashley Reed	Hollywood Group	1007 W 3rd Ave #200 Anchorage AK 99501	H 463 3564 W 279 5359		
James Sawwick	Dept. of Labor		H W 465-2700	Yes	452
Paul Spritz	AFL-CIO	1211 FIRST ST ANCHORAGE, AK	H W 586-1620	No	452
Tom			H W		
Cherie Shelley	A.P.E.A.	3410 1st Fl. St Anchorage 99801	H W 586-2334		
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			H W		
			H W		

go0068hL

Utermohle  
3/14/88

Original sponsor: Rules /Governor

1 IN THE HOUSE

2 CS FOR HOUSE BILL NO. 368 ( )

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

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go0068hX  
Utermohle  
3/23/88

Original sponsor: Rules /Governor

1 IN THE HOUSE

BY THE LABOR AND  
COMMERCE COMMITTEE

2 CS FOR HOUSE BILL NO. 368 (L&C)

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4 FIFTEENTH LEGISLATURE - SECOND SESSION

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(E) administering and interpreting standardized and nonstandardized assessments, including sensory, manual muscle, and range of motion assessments, necessary for planning effective treatment; and

(F) adapting environments for the disabled;

\* Sec. 3. This Act takes effect immediately under AS 01.10.070(c).



go0068hX

Utermohle  
3/25/88

Original sponsor: Rules /Governor

1 IN THE HOUSE

BY THE LABOR AND  
COMMERCE COMMITTEE

2 CS FOR HOUSE BILL NO. 368 (L&amp;C)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act exempting certain persons from the require-  
7 ment to be licensed as an occupational therapist or  
8 occupational therapy assistant; and providing for an  
9 effective date."

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

11 \* Section 1. AS 08.84.150(b) is amended to read:

12 (b) A person may not practice occupational therapy without being  
13 licensed unless the person is14 (1) a student in an accredited occupational therapy program  
15 or in a supervised field work program;16 (2) a graduate of a foreign school of occupational therapy  
17 fulfilling the internship requirement of AS 08.84.032, and then only  
18 unless under the continuous direction and immediate supervision of an  
19 occupational therapist;20 (3) an occupational therapist or occupational therapy  
21 assistant employed by the United States Government while in the dis-  
22 charge of official duties; [OR]

23 (4) granted a limited permit under AS 08.84.075;

24 (5) licensed under this title and uses occupational therapy  
25 skills in the practice of the profession for which the license is  
26 issued; or27 (6) employed as a teacher or teacher's aide by an educa-  
28 tional institution and is required to use occupational therapy skills  
29 during the course of employment, if

1                   (A) the occupational therapy skills are used under a  
2 program implemented by the employer and developed by a licensed  
3 occupational therapist;

4                   (B) the employer maintains direct supervision of the  
5 person's use of occupational therapy skills; and

6                   (C) the person does not represent to  
7                         (i) be an occupational therapist or occupational  
8 therapy assistant; and

9                         (ii) practice occupational therapy.

10 \* Sec. 2. AS 08.84.190(3) is amended to read:

11                   (3) "occupational therapy" means, for compensation, the use  
12 of purposeful activity, evaluation, treatment, and consultation with  
13 human beings whose ability to cope with the tasks of daily living are  
14 threatened with, or impaired by developmental deficits, learning  
15 disabilities, aging, poverty, cultural differences, physical injury or  
16 illness, or psychological and social disabilities to maximize indepen-  
17 dence, prevent disability, and maintain health; "occupational therapy"  
18 includes

19                         (A) developing daily living, play, leisure, social,  
20 and developmental skills;

21                         (B) facilitating perceptual-motor and sensory inte-  
22 grative functioning;

23                         (C) enhancing functional performance, prevocational  
24 skills, and work capabilities using specifically designed exer-  
25 cises, therapeutic activities and measure, manual intervention,  
26 and appliances;

27                         (D) design, fabrication, and application of splints or  
28 selective adaptive equipment;

29                         (E) administering and interpreting standardized and

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nonstandardized assessments, including sensory, manual muscle, and range of motion assessments, necessary for planning effective treatment; and

(F) adapting environments for the disabled;

\* Sec. 3. This Act takes effect immediately under AS 01.10.070(c).