

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672

4843 HLAB SB 274 - SB 322

415

requirements. The consequences would be a loss of the federal share of unemployment insurance funds. The U.S. Labor Department Employment and Training Administration addresses this "Compliance Question" annually each October.

Without this legislation, there will continue to be instances when workers, who have not yet retired, and most of them young, will be displaced by supposedly retired workers in the same line of work. In addition, retirement benefit funds would be drawn down unnecessarily, harming all retired workers.

The Alaska Department of Labor has a position paper in favor of CSSB 274 (L&C), and it has a zero fiscal note. The bill passed the Senate unanimously.

Proposed Committee Substitute

The proposed committee substitute before you incorporates SB 428 into CSSB 274 (L&C). SB 428, introduced by the Governor, would allow the Department to make public disclosures of the residency status of employees. Individual employees would not be identified. The purpose is to publicly inform employers of their resident hire record and to encourage them to consider qualified Alaskans for recruitment.

As in the case of release of information to plan administrators, the department may not release information on employer's hiring practices if the U.S. Secretary of Labor rules that the information would be grounds to find that the state is in noncompliance with federal law.

See attached letter of transmittal from Governor Cowper for further background information.

I urge your passage of the committee substitute proposed by the House Labor and Commerce Committee.

Sectional Analysis of proposed House L&C CS for CSSB 274 (L&C)

Sections 1. Purpose of AS 23.20.110(i)

Sets out the purpose, citing the state's high unemployment and the economic problems it causes for the state's residents, as justification for giving the department access to data on employee residency.

Section 2. AS 23.20.110 Information obtained by department.

Subsection (a) is amended to refer to exceptions in new subsections (h) and (i).

Section 3. AS 23.20.110 Information obtained by department.

Adds a new subsection (h) to allow the department to make available upon request to an employee pension benefit plan administrator, the name, address, and if available, the person's current occupation. The information must be kept confidential by the administrator, unless it is relevant to a legal proceeding in which the plan or the administrator is a party. The department may also require reimbursement from the requesting party for the cost of furnishing the information.

Adds a new subsection (i) to allow the department to publicly disclose the residency status of employees to encourage employers to voluntarily consider the availability of qualified job seekers who are residents of the state. It would allow the department to disclose an employer's practice of hiring persons who are not residents of the state.

Adds a new subsection (j) that prohibits the department from releasing information under (h) or (i) if the U.S. Secretary of Labor rules that the release of the information would cause noncompliance with federal requirements. The consequences would be a loss of the federal share of unemployment insurance funds. The U.S. Labor Department Employment and Training Administration addresses this "Compliance Question" annually each October.

Provided by Senator Farhenkamp's office.

STEVE COWFER
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 16, 1988

The Honorable Jan Faiks
President of the Senate
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Senator Faiks:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to disclosure of certain employment security information. The bill amends existing AS 23.20.110, regarding confidentiality and release of employment security records, to allow the Department of Labor to make public disclosures of the residency status of employees. Additionally, the bill provides a mechanism to preclude disclosure if the United States Department of Labor finds that the bill would place the employment security program in substantial noncompliance with federal program requirements in 42 U.S.C. 503(a).

Alaska is presently experiencing high unemployment, with substantial economic problems, among its residents. The Department of Labor is responsible for advancing opportunities for workers in Alaska in order to reduce that alarming unemployment rate (AS 23.05.010). One avenue open to the department is to publicly inform employers of their resident hire record and to encourage them to consider qualified Alaskans for recruitment.

At the present time, AS 23.20.110(a) precludes the department from making such public statements based on employment security records. The bill amends the statute to allow disclosure. Sections 2 and 3 of the bill.

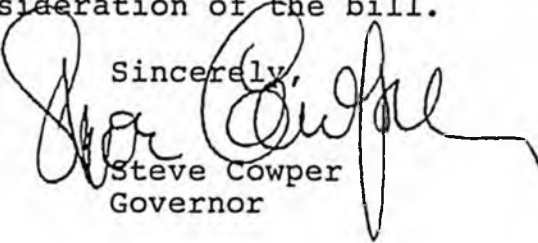
The bill adequately protects the privacy interests of the individual employees involved, for it precludes the department from releasing an employee's name, or information that would individually identify an employee. Section 3 of the bill.

Additionally, while the bill allows employers to be individually named, it expressly precludes the denial or limitation of department benefits, or other discrimination against the employer, because of the department's analysis of the employer's hiring practices. Section 3 of the bill.

Because the employment security program must comply with federal program requirements in order to receive federal money, the bill adequately protects that money by prohibiting disclosure of the information if the federal government finds that that action would cause a substantial noncompliance with the requirements of 42 U.S.C. 503(a). Section 3 of the bill.

This bill has the strong support of the Department of Labor and is consistent with this Administration's goal of enhancing job opportunities for Alaska residents. I urge your prompt and favorable consideration of the bill.

Sincerely,


Steve Cowper
Governor

FISCAL NOTE

REQUEST: _____

Revision Date: _____
Title: "An Act relating to disclosure
of certain employment security information."
Sponsor: Rules Committee
Requestor: Governor

Agency Affected: Labor
BRU: Employment Security
Components: Unemployment Insurance

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						
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REVENUE						
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Joe Sitton, Director Phone: 465-2725
Division: Employment Security Date: 2/9/88

Approved by Commissioner: Jim Sampson Date: 2/9/88
Agency: Labor

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

opinion

2-24-88

Anchorage Daily News



Winner, 1976 Pulitzer Prize Gold Medal for Public Service

Gerald E. Grilly
Publisher

Howard Weaver
Managing Editor

Michael Carey
Editorial Page Editor

Katherine Fanning, Editor and Publisher 1971 to 1983
Lawrence Fanning, Editor and Publisher 1967 to 1971

Founded In 1946 by Norman C. Brown

Local hiring report card

If ever there's a motherhood issue in Alaska, it's local hiring. Everybody supports it. But when it's time to turn local hiring rhetoric into reality, some employers don't try as hard as others.

Those employers might hire fewer Outsiders if they knew somebody was handing out grades and naming names. And that's what Gov. Steve Cowper wants the state Labor Department to do.

He's asking the legislature for authority to publish the local hiring records of individual businesses. To ensure accuracy, the state will cross check residency claims with that ultimate proof of Alaska residence, the permanent fund dividend check.

It's a great idea — with one catch. Federal law may prevent the state from publishing such information on individual firms. Gov. Cowper's bill would prohibit disclosure if that's the case. The rules in this area are fuzzy, and the only way to get a definitive answer is to give disclosure a try.

The U.S. Constitution properly puts tight limits on what the state can do to force employers to hire Alaskans. But one constitutionally acceptable tool is the threat of bad publicity. Gov. Cowper is right: Employers will take local hiring more seriously if they know their records are open for for all to see.

Labor report zeroes in on Alaska jobs

By LARRY PERSILY

The Associated Press

JUNEAU — A Department of Labor report says most non-residents working in Alaska take jobs in the seasonal industries of seafood processing, tourism and construction.

"You go where the work is," said Labor Commissioner Jim Sampson. "Those types of industries surely are migratory."

The short-term jobs mean lower wages for non-residents.

The report says Alaskans averaged \$20,137 in annual wages for 1986, while non-residents earned an average \$8,339 for their work in the state.

The report was ordered by the legislature in 1986 when it passed a new local hire preference law. The law replaced the state's mandatory resident hire statute that had been declared unconstitutional by the courts.

The 60-page report given to lawmakers this session does not contain any statistics from 1987.

Although non-residents work fewer months and earn less wages than do residents, thousands of them find work in Alaska each year.

"I wish there were a lot of easy answers," Sampson said Thursday. "We still have a problem out there."

The report compares unemployment statistics with permanent fund dividend residency information.

The impact of local hire on

Cowper wants local hire records open to the public

The Associated Press

JUNEAU — Employers' local hire records would become public information under legislation introduced by Gov. Steve Cowper.

The Department of Labor publishes non-resident hire information by industry and occupation. Cowper's bill (SB459) would permit the department to report non-resident hire records of individual employers.

"I think the public wants to know which businesses are doing their part to put Alaskans to work," Cowper said. "Right now we can find out who's hiring outsiders, but we can't tell anyone. That's absurd."

The Labor Department is able to match employment records with residency information from Alaska Permanent Fund dividend applications. The bill would remove the confidentiality provisions of state law to allow disclosure of the hiring information. It would not allow the release of employee names and wages.

Alaska's current local hire preference law is not as strong as the prior law that was declared unconstitutional by the courts.

"Public pressure is an important tool in convincing employers to hire residents," Cowper said.

A report from the Labor department shows that non-residents took home 8.7 percent of all wages paid in Alaska in 1986.

Alaska residents in 1986 earned more than \$5 billion in wages, compared to \$486 million paid to non-residents.

The report, released last month, also shows that non-residents comprised about 19 percent of the workers in Alaska, but earned much less than residents. The average earnings for a non-resident in 1986 were \$8,339, compared to \$20,137 for an Alaskan.

Unemployment checks going out of state, the report says, "reflect the migration of workers to residences and labor markets outside of Alaska."

• A good year for commercial fishing and recovery in the timber industry was not enough to offset dramatic drops in oil and gas and construction jobs.

dents worked three months or less in 1986, accounting for the low earnings per employee when compared to resident workers.

The seafood industry is the largest single employer of non-resident workers, with retail and service jobs next in line.

"In some industries, such as seafood processing, the poor percentage of resident workers may be due to the refusal of many Alaskans to work in the plants," the report says. "Alaskans cite the seasonal nature of the work, the remoteness of the plants, and most of all, the long hours and low pay as reasons for not wanting to work in this industry."

The report notes that the Labor Department is working to improve the percentage of Alaskans hired at seafood plants. It also states, "As companies turn to processing a variety of species, employment will become less seasonal in nature."

The oil and gas industry, perhaps the most controversial employer in Alaska, paid non-residents \$80 million of its \$567 million payroll in 1986. Because of shorter employment, non-residents earned about 60 percent of the annual wages paid resident workers at oil and gas jobs.

The report says, "The state should assist industry in the permitting process, but expedited permits deserve something in return, and making a commitment to hire Alaska's work force should be the

May 11, 1987

Senator Bettye Fahrenkamp
State Capitol
Room 125
Juneau, Alaska 99811

Re: Senate Bill No. 274

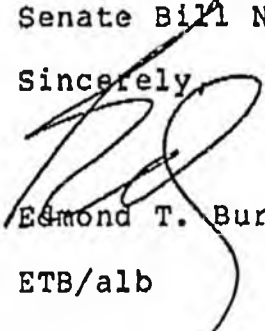
Dear Senator Fahrenkamp: .

I hope serious consideration will be given to Senate Bill No. 274.

As you know, all multi-employer pension plans are designed to provide benefits upon retirement. Most have a suspension of benefits provision should participants return to active employment after retirement. Unfortunately, it is almost administratively impossible to equitably enforce this provision as there is no "efficient" mechanism to determine if a person has returned to work. Plan sponsors have only social security, word of mouth, or statements from participants. Senate Bill No. 274 would help plan sponsors to efficiently and equitably administer the return to work provisions of multi-employer pension plans.

We, therefore, hope serious consideration is given to Senate Bill No. 274 by both the Senate and House.

Sincerely,



Edmond T. Burgan

ETB/alb

Bill No. Committee Substitute for
Senate Bill 274 (L&C)

Title "An Act relating to access to
employment security records."

Date May 13, 1987

Contact: Joe Sitton
465-2712

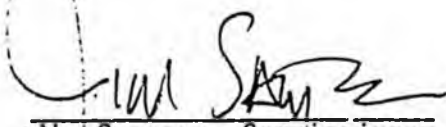
Eileen Plate
465-2700

Committee Substitute for Senate Bill 274 (L&C) allows the Employment Security Division to provide to an Administrator of a joint administered pension plan information verifying an individual's employment and occupation. The plan administrator is required to keep such information confidential, unless it is relevant to a legal proceeding in which the administrator or plan is a party. This bill will help pension plans implement and enforce ERISA's return to work regulations, which provide that trustees can disallow pension benefits to participants in a plan should they return to work in the industry in the geographical area covered by the plan and work over 39 hours in a calendar month. This bill is supported by both management and labor trustees who serve on pension plans in Alaska.

The Department's concerns with this legislation have been addressed in the Labor and Commerce Committee Substitute for Senate Bill 274, which states that should the release of this information cause the department to be out of conformity, such information cannot be released. The importance of this is that should the U.S. Department of Labor rule that Alaska is out of conformity, all funding for our Employment Service and Unemployment Insurance programs could be withheld. Section 3 of the bill, therefore, safeguards against this.

The Department of Labor supports this bill.

APPROVED:



Jim Sampson, Commissioner
Department of Labor

POSITION PAPER/Department of Labor

Bill No. Committee Substitute for
Senate Bill 274 (L&C)
Title "An Act relating to access to
employment security records."

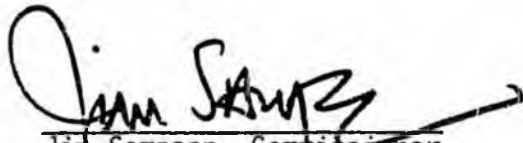
Date February 17, 1988
Contact: Joe Sitton
465-2712
Eileen Plate
465-2700

Committee Substitute for Senate Bill 274 (L&C) allows the Employment Security Division to provide to an Administrator of a joint administered pension plan information verifying an individual's employment and occupation. The plan administrator is required to keep such information confidential, unless it is relevant to a legal proceeding in which the administrator or plan is a party. This bill will help pension plans implement and enforce ERISA's return to work regulations, which provide that trustees can disallow pension benefits to participants in a plan should they return to work in the industry in the geographical area covered by the plan and work over 39 hours in a calendar month. This bill is supported by both management and labor trustees who serve on pension plans in Alaska.

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The Department of Labor supports this bill.

APPROVED:


Jim Sampson, Commissioner
Department of Labor

POSITION PAPER/Department of Labor

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An act relating to access to
employment security records."
Sponsor: Fahrenkamp
Requestor: Senate Labor and Commerce

Agency Affected: Labor
BRU: Employment Security
Components: Unemployment Insurance

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						
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REVENUE						
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FUNDING: (Thousands of Dollars)

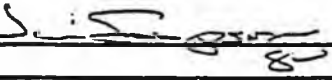
GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Joe Sitton, Director 
Division: Employment Security Division Phone: 465-2712
Date: 1/15/88

Approved by Commissioner: Jim Sampson 
Agency: Labor Date: 1/15/88

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

No 314

B

STATE OF ALASKA 1987 LEGISLATIVE SESSION FISCAL NOTE

REQUEST: _____

Bill Version: CS SB274 Lrc
Publish Date: 5-4-87

Revision Date: _____

Agency Affected: Labor

Title: "An Act relating to access to employment security records."

BRU: Employment Security

Sponsor: Fahrenkamp

Components: Unemployment Insurance

Requestor: Senate Labor and Commerce

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: ^{NB} Joe Sitton, Director
 Division: Employment Security Division Phone: 465-2712
 Date: 5/1/87

Approved by Commissioner: ^{NB} Jim Sampson
 Agency: Labor Date: 5/1/87

- Distribution (by preparer):
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 - Legislative Sponsor
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 - Senate Secretary

Alaska State Legislature

REPRESENTATIVE
MARK BOYER

HOUSE FINANCE COMMITTEE



House of Representatives

FAIRBANKS

1098 LAKEVIEW TERRACE
FAIRBANKS, ALASKA 99701
(907) 456-6473

JUNEAU

P.O. BOX V
STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-3466

MEMORANDUM

RECEIVED
FEB 2 1988

TO: Representative Dave Donley, Chairman
House Labor and Commerce Committee

FROM: Representative Mark Boyer *MB*

SUBJECT: SB 274, relating to access to employment security
records

DATE: February 23, 1988

I support the bill referenced above and request that you schedule it for a hearing in your committee at your earliest convenience.

S B

287

HOUSE COMMITTEE REPORT

(7)

Date referred: 3/21/88

FURTHER REFERRALS:

DATE: 4/21/88

The Labor & Commerce Committee has considered CSSB 287(L&C)

"An Act relating to the practice of veterinary medicine."

RECOMMENDS:

- replace with H.C.S. CSSB 287 (L+C) 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 3/15/88
- zero with analysis

SIGNING DO PASS:

Walter Duley

Clayton Anderson

Scott Anderson

Walter Kozma

SIGNING OTHER RECOMMENDATIONS:

Walter Duley

W.B. Brubaker (no rec)

J. Ellis (no rec)

Walter Duley
Chairman's signature

STATE OF ALASKA
1988 LEGISLATIVE SESSION

25513 287 (LIC)
BILL VERSION: SB 287
PUBLISH DATE: 3/15/88

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An Act relating to the practice of veterinary medicine.
Sponsor: Senator Faiks
Requestor: _____

Agency Affected: Commerce & Economic Dev.
BRU: Occupational Licensing
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
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)

New funding is not required to implement the provisions of this bill.

2PB Prepared by: Jennifer Strickler, Mgnt. Analyst
Division: Occupational Licensing

Phone: 465-2144
Date: January 21, 1988

Approved by Commissioner: J. Anthony Smith
Agency: Commerce and Economic Development

Date: 1-22-88

Distribution (by preparer):

Legislative Finance
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Office of Management and Budget
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Alaska State Legislature

SENATE

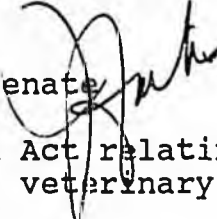
Office of the President

P.O. Box V
State Capitol
Juneau, Alaska 99811
(907) 465-3755

MEMORANDUM

March 21, 1988

TO: Representative Dave Donley, Chairman
House Labor and Commerce Committee

FROM: Senator Jan Faiks
President of the Senate 

SUBJECT: CSSB 287 (L&C) "An Act relating to the practice
of veterinary medicine."

Senate Bill 287 has been referred to the House Labor and Commerce Committee for consideration. This bill proposes amendments to AS 08.98, which relates to the practice of veterinary medicine.

The purpose of CSSB 287 (L&C) is to update and clarify the professional practice of veterinary medicine in Alaska. The bill does not add any additional restrictions to the private citizen who treats animals without compensation, such as a person who treats his/her own animals.

The bill makes the following changes to the current law:

Section 1. QUALIFICATION FOR LICENSE. Amends AS 08.98.165(a) by changing the phrase "pass the examination" to "has met the requirements" of the American Veterinary Medical Association Commission (AVMAC) for Foreign Graduates where this qualification is required for licensure under AS 08.98.165 and 08.98.184. The AVMAC has set up new requirements for issuance of their certification and have not actually administered an examination for several years, hence the current wording is obsolete.

Section 2. TEMPORARY LICENSE. Amends AS 08.98.180 by strengthening the temporary license requirements for veterinarians. An applicant for licensure in Alaska must pass three separate tests: the National Board Examination (NBE), the Clinical Competency Test (CCT), and the state written or

practical examination. The NBE and the CCT are both nationally recognized examinations which may be taken by the applicant prior to application or during the next scheduled Alaska examination. There have been occasions where the applicant has failed one or more of these tests but desires to obtain or continue employment as a veterinarian in Alaska. There is nothing in the current statutes which prohibit them from applying for and receiving the temporary license or temporary permit under AS 08.98.180 and AS 08.98.186.

This language will allow the board to continue to issue temporary licenses to new applicants who have not yet had the opportunity to sit for the next scheduled examinations, or those who do not need to sit for all of the exams due to licensing in another state with comparable requirements, and will allow the board to deny licenses to those who have actually demonstrated a lack of minimum competency.

Section . LICENSURE BY CREDENTIALS. Amends AS 08.98.184, as under section 1 of this bill, by changing the phrase "pass the examination" to "has met the requirements" of the American Veterinary Medical Association Commission (AVMAC) for Foreign Graduates.

Section 4. LOCUM TENENS PERMIT. Repeals and reenacts AS 08.98.186, relating to temporary permits granted to visiting veterinarians. The current statute allows practicing veterinarians from other states to take over the practice of an Alaska veterinarian for up to 60 days under a renewable license, with the signature of the Alaska veterinarian whose practice is involved.

Individual license holders, veterinary associations, and other groups frequently desire to invite qualified practitioners from other jurisdictions to travel to Alaska to assist in treatments, provide demonstrations or other continuing education or hold specialty clinics. Our limited population still prohibits most "consultants" from setting up permanent practice situations which would require a regular license, and they do not fit into the specific language of the "relief veterinarian" category. However, they do practice veterinary medicine under the definition in our statutes and need to have some guidelines to limit the scope and conditions of their services. Such individuals would be limited to a 60 day permit, which may be renewed once within a two year period.

Section 5. FEES. Amends AS 08.98.190 to enable the board to set fees for locum tenens permits.

Section 6. DEFINITIONS. Makes housekeeping changes to AS 08.98.250(6); amends the definition of the practice of

veterinary medicine to allow lay vaccinators to administer rabies vaccine, as well as to allow federal government veterinarians to practice within the scope of their employment.

Please contact my office if you have any questions or comments.

VETERINARY ASSOCIATES, P. C.
COLLEGE VILLAGE ANIMAL CLINIC
2036 E. NORTHERN LIGHTS BLVD.
ANCHORAGE, ALASKA 99508

Telephone 274-3623

March 25, 1988

Representative Dave Donley
Chairman, Labor and Commerce Committee
P.O. Box 7
Juneau, AK 99811

RECEIVED
MAR 30 1988

Re: Senate Bill 287, Alaska Board of Veterinary Examiners Legislative Request

Multiple Occupational Licensing bills have been submitted by the Governor over the past several years containing, in part, several minor housekeeping amendments to the Veterinary Statutes (AS 08.98). None of these bills has been passed. The same basic amendments along with minor housekeeping requests from several other boards are again being sent to the Governor for introduction as a Miscellaneous Amendments Bill. The Board of Veterinary Examiners decided at its meeting February 5-6, 1987 to request members of the Legislature to introduce the veterinary statute housekeeping changes along with new amendments which we have formulated in response to areas where we feel that the current statutes fail to address some specific problems.

1. The initial housekeeping request is to change the phrase "pass the examination" to "has met the requirements" of the American Veterinary Medical Association Commission (AVMAC) for Foreign Graduates where this qualification is required for licensure under AS 08.98.165 and 08.98.184. The AVMAC has set us new requirements for issuance of their certification and have not actually administered an examination for several years, hence the current wording is obsolete.
2. An applicant for licensure in Alaska must pass three separate tests: The National Board Examination (NBE), the Clinical Competence Test (CCT), and the state written or practical examination. The NBE and the CCT are both nationally recognized examinations which may be taken by the applicant prior to application or during the next scheduled Alaska examination. We have had occasions where the applicant has failed one or more of these tests but desires to obtain or continue employment as a veterinarian within this state. There is nothing in the current statutes which prohibits them from applying for and receiving the temporary license or temporary permit under AS 08.98.180 and .136. We wish to continue to allow new applicants for temporary license, who have not yet had the opportunity to sit the next scheduled examinations, and those who do not need to sit for the exams due to licensing in another state with comparable requirements, to receive approval while adding language which will allow us to deny licenses to those who have actually demonstrated a lack of minimum competency.
3. The temporary permit in the veterinary statute currently applies to those cases where a veterinarian licensed and qualified in another state is hired specifically

to work for a short time in an established practice while the regular veterinarian is absent. The same term, temporary permit, is used in the Medical Board statutes to apply to an applicant awaiting examination, and the term "Locum Tenens permit" is used to designate a relief practitioner. Renaming these permits would eliminate a lot of confusion.

4. Individual license holders, veterinary associations, and other groups frequently desire to invite qualified practitioners from other states or countries to travel to Alaska to assist in treatments, provide demonstrations or other continuing education, hold specialty clinics, or assist in races or other events involving veterinary care of animals. Our limited population still prohibits most "consultants" from setting up permanent practice situations which would require a regular license, and they do not fit into the specific language of the "relief veterinarian" category. However, they do practice veterinary medicine under the definition in our statutes and need to have some guidelines to limit the scope and conditions of their services. The addition of a subsection (b) under AS 08.98.186 sets up an appropriate licensing category and limitations. The addition is as follows:

AS 08.98.186(b) Consult with and/or assist a veterinarian licensed and practicing in this state provided that such practice is limited to animals under the care of the Alaskan Licensed Supervising Veterinarian. As application under this section shall be signed by the supervising veterinarian and by the applicant. This Locum Tenens permit is valid for no longer than 60 consecutive days and may be renewed once within a two year period.

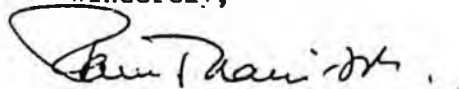
(c) Application must be accompanied by required fees.

5. Additional language has been recommended to be added to AS 08.98.250(6). Definition of the practice of veterinary medicine to clarify two additional situations where certain practices currently utilized in Alaska are allowed to continue without requiring a license to practice. They are the lay vaccinator program for rabies control under the Alaska Department of Health and Social Services, and a standard exclusion for military and U.S. Department of Agriculture personnel.

These amendments are much needed to clarify a number of licensing loopholes and confusing areas within the current statutes. They have the support of the Department of Occupational Licensing and all of the affected veterinary groups.

We would very much appreciate your prompt attention so that the bill will complete passage this session. Please contact me if you have any questions.

Sincerely,



Pam Tuomi, D.V.M.

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

HL+C

4-21-88

2:00p.m.

S B

3 0 9

HOUSE COMMITTEE REPORT

(7)

Date referred: 3/28/88

FURTHER REFERRALS: Resources

DATE: 4/26/88

The Labor & Commerce Committee has considered CSSB 309 (Res)

"An Act relating to the definition of commercial fisherman under statutes regulating commercial fishing."

RECOMMENDS:

- replace with _____ 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 3/22/88
- zero with analysis

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

Donald Douley

W. L. Korman

Clyde Davidson

Chas. A. Pugh

Samuel M. ...

Ellis

W. J. ...

Donald Douley

Chairman's signature

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: CSSB 309 (Res)

PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Labor
 Title: "An Act Relating to the
definition of commercial fisherman..." BRU: Workers' Compensation
 Sponsor: Zharoff Components: Workers' Compensation
 Requestor: House Labor & Commerce

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	0.0	0.0	0.0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Prepared by Jacque McClintock Phone: 465-2790
 Division: Workers' Compensation Date: 4/26/88
 Approved by Commissioner: Jim Sampson Date: 4/26/88
 Agency: Department of Labor

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

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Labor
 Title: "An Act Relating to the Definition of Commercial Fisherman" BRU: Workers Compensation
 Sponsor: Zharoff Components: Workers Compensation
 Requestor: Senate Labor and Commerce

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	0	0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Jacquie McClintock Phone: 465-2790
 Division: Workers' Compensation Date: 1/26/88
 Approved by Commissioner: Jim Sampson Date: 1/26/88
 Agency: Labor

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

ALASKA STATE SENATE



SENATOR TIM KELLY
ANCHORAGE/EAGLE RIVER
CHAIRMAN

SENATOR DICK ELIASON
SITKA
VICE CHAIRMAN

LABOR AND COMMERCE COMMITTEE

MEMBERS
SENATOR BETTYE FARRENKAMP
FAIRBANKS

SENATOR RICK UEHLING
ANCHORAGE

SENATOR MIKE SZYMANSKI
ANCHORAGE

Letter of Intent for CSSB 309 (L&C)

It is the intent of the Legislature that a person injured while working as a processing worker shall not be able to claim benefits from the Fishermen's Fund even though that person may hold a commercial fishing license.



SENATOR FRED F. ZHAROFF
ALASKA STATE LEGISLATURE

P.O. BOX 405, KODIAK, ALASKA 99615 (907) 486-5259

DURING SESSION:

P.O. BOX V, JUNEAU, ALASKA 99811 • (907) 465-3473 • 465-3474

G

DISTRICT N

ALASKA PENINSULA • ALEUTIAN CHAIN • BRISTOL BAY • KODIAK ISLAND • LAKE CLARK/LAKE ILIAMNA • PRIBILOF ISLANDS • SHUMAGIN ISLANDS

TO: Representative David Donley
Chairman
House Labor and Commerce Committee

FROM: Senator Fred F. Zharoff *F. Zharoff*

DATE: March 31, 1988

RE: CS For Senate Bill 309 -- "An Act relating to the definition of commercial fisherman under statutes regulating commercial fishing."

SB 309 amends 16.05.940(4) to eliminate processing workers on floating fish processing vessels from the definition of "commercial fisherman".

In 1986, the legislature passed a bill that exempted commercial fishermen from workers' compensation coverage. This was done for two reasons: (1) Commercial fishermen were not originally intended to be covered by workers' compensation. (2) Injured commercial fishermen are compensated under the provisions of maritime law; workers' compensation coverage would be an unnecessary duplication. The bill had the effect of affirming and clarifying the Department of Labor's current interpretation of the law.

The passage of the bill, however, resulted in one, unintentional side effect. Under current statutes, processing workers on board floating seafood processing vessels have been defined as "commercial fishermen" since they are part of the crew of a "floating craft used in transporting fish". Under the new law, they were now exempt from workers' compensation coverage, which raised havoc with floating processors' insurance rates. It was never the intent of the legislature to prevent processing vessel workers from being covered by workers' compensation.

In addition, SB 309 addresses an inconsistency in state law, now corrected by a recent attorney general's opinion. As commercial fishermen, floating processing vessel workers were required to hold commercial fishing licenses. Over half the proceeds from the sale of commercial fishing licenses (\$18 from a \$30 resident license and \$54 from a \$90 nonresident license) go to the Fishermen's Fund, a compensation program for injured commercial fishermen. Under a previous attorney general's opinion, floating processing workers were barred from receiving any benefits from the Fishermen's Fund. In the interest of fairness, people who cannot receive benefits from the fund should not be forced to pay into it.

In an opinion dated Oct. 20, 1987 (attached), however, the attorney general determined that processing workers did not, in fact, need to purchase or possess commercial fishing licenses. The attorney general found that

processing workers on seafood processing vessels were manufacturing employees (the same as their counterparts in a shoreside processing plant) and distinct from the traditional definition of a "commercial fisherman".

The seafood processing companies have told us that despite the October attorney general's opinion, they are still encountering a great deal of resistance in convincing their insurers that workers on floating processors qualify for workers' compensation.

SB 309 would clear up this issue and leave absolutely about what the statute means.

Backup information for SB 109 is attached, as follows:

1. Department of Labor fiscal note.
2. Department of Public Safety fiscal note.
3. Chronology of events.
4. Senate Labor and Commerce Letter of Intent.
5. Attorney General's opinion, dated Oct. 20, 1987, stating that processing workers on mobile floating processing vessels are not required to hold commercial fishing licenses.
6. Attorney General's opinion, dated Feb. 22, 1984, stating that workers on floating processing ships need commercial fishing licenses and workers in shorebased processing plants do not.
7. Attorney General's opinion, dated Nov. 15, 1982, stating that floating processor workers do not qualify for Fishermen's Fund benefits.
8. Excerpt from the Division of Legal Service's "Report to the Thirteenth State Legislature Examining Court Decisions and Opinions of the Attorney General Construing Alaska Statutes", October, 1984, recommending legislative review of this issue.
9. Copies of the relevant state statutes, 16.05.480 (Commercial fishing license) and 16.05.940(4) (Definition of commercial fisherman).
10. Chapter 77 from the 1986 session laws, "An Act Exempting commercial fishermen from workers' compensation coverage."

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: SB 309
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An act relating to the definition of commercial fisherman."
Sponsor: Zharoff
Requestor: Senate Labor & Commerce

Agency Affected: Labor
BRU: Workers' 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						
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	0	0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Jacque McClintock Phone: 465-2790
Division: Workers' Compensation Date: 1/22/88

Approved by Commissioner: Jim Samson Date: 1/22/88
Agency: Labor

Distribution (by preparer):

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

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An act relating to the definition of commercial fishermen
Sponsor: Zharoff
Requestor: Senate Resources

Agency Affected: Public Safety
BRU: Fish & Wildlife Protection
Components: Enforcement

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						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

No fiscal impact is anticipated.

JNR
2/10/88

Prepared by: Captain Conrad G. Seibel *C. Seibel* Phone: 269-5509
Division: Fish & Wildlife Protection Date: 2/2/88

Approved by Commissioner: *J. Hooley* Date: 3-2-88
Agency: Department of Public Safety

Distribution (by preparer):

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

CHRONOLOGY OF EVENTS SURROUNDING SB 309

- Nov., 1982 - Attorney General issues opinion (Asst. A.G. Gary Amendola to Glenn Lundell, deputy commissioner, Dept. of Labor, Nov. 15, file #366-252-83) saying that crewmembers on board floating fish processing vessels are not, by definition, engaged in "commercial fishing" and they do not qualify for Fisherman's Fund benefits (a special fund, administered by the Department of Labor, for compensating injured commercial fishermen).
- Feb., 1984 - Attorney General issues opinion (Asst. A.G. Kathleen McGuire to Lt. Col. Tetzlaff, Div. of Fish & Wildlife Protection, Feb. 22, file #166-358-84) saying that employees on board floating processing vessels, since they are engaged in the transport of fish, are required to have commercial fishing licenses.
- Oct., 1984 - The legislature's Division of Legal Services notes in its "Report to the Thirteenth State Legislature Examining Court Decisions and Opinions of the Attorney General Construing Alaska Statutes" the inconsistency in the two previous AG opinions -- floating processing workers are required to have commercial fishing licenses, but they are denied Fisherman's Fund benefits. Legislative review is recommended.
- May, 1986 - As part of an effort to clear up ambiguities and problems in regard to marine insurance, the Alaska Legislature passes a bill exempting commercial fishermen from workers' compensation.
- Spring, 1987 - Seafood processors contact Senator Zharoff. They complain their insurance companies have informed them that since the employees on floating processing vessels are defined as "commercial fishermen", and since commercial fishermen are now exempt from workers' compensation, the insurance companies will no longer sell the processors workers' compensation coverage. Instead, the processors must buy more expensive marine protection and indemnity (P&I) insurance policies.
- May, 1987 - Senate Bill 309 introduced in an effort to resolve the problem.
- Summer, 1987 - Seafood processors complain about Fish and Wildlife Protection officers boarding their processing vessels to enforce the requirement that all workers have commercial fishing licenses.
- Oct., 1987 - Attorney General issues opinion (Asst. A.G. Sarah McCracken to Col. Jack Jordan, director, Div. of Fish and Wildlife Protection, Oct. 20, file #661-87-0428) saying that processing workers on board mobile floating vessels are not "commercial fishermen" and do not need to hold commercial fishing licenses.
- Spring, 1988 - Insurance companies continue to charge P&I rates despite the most recent Attorney General's opinion. Source: Rick Lauber of the Pacific Seafood Processors Association in testimony to the Senate Resources Committee, April 21.

SB 309

The Labor and Commerce Committee considered SENATE BILL NO. 309 (An Act relating to the definition of commercial fisherman under statutes regulating commercial fishing) and a majority of the committee recommended it be replaced with

CS FOR SENATE BILL NO. 309(L&C)

and do pass with a Letter of Intent. The report was signed by Senator Kelly, Chairman and concurred in by Senators Szymanski and Uehling.

Zero fiscal note published today from Department of Labor.

Letter of Intent
for
CSSB 309(L&C)

It is the intent of the Legislature that a person injured while working as a processing worker shall not be able to claim benefits from the Fishermen's Fund even though that person may hold a commercial fishing license.

SENATE BILL NO. 309 was referred to the Resources Committee.

SB 353

The Resources Committee considered SENATE BILL NO. 353 (An Act extending the agricultural production credit law). Senator Coghill, Chairman signed "do pass". Senators Duncan, Fanning and Fischer signed "no recommendation".

Zero fiscal note published today from Department of Natural Resources.

SENATE BILL NO. 353 was referred to the Finance Committee.

SB 317

The Rules Committee considered SENATE BILL NO. 317 (An Act relating to the refunds of fisheries tax proceeds made to local governments) and a majority of the committee recommended calendar. The report was signed by Senator Hensley, Vice-chairman and concurred in by Senators Faiks, Binkley and Jones.

MEMORANDUM

State of Alaska DEPARTMENT OF LAW

TO: Col. Jack Jordan, Director
Division of Fish & Wildlife
Protection
Department of Public Safety

DATE: October 20, 1987

FILE NO: 661-87-0428

TELEPHONE NO:

THRU:

SUBJECT: Commercial fishing
licenses: applicability
to processors

FROM: Sarah E. McCracken ^{SEM}
Assistant Attorney General
Natural Resources-Anchorage

A March 17, 1987, memorandum from then Acting Director Capt. James Nutgrass requested our advice regarding various aspects of Alaska's commercial fisheries licensing statutes (copy of memorandum attached). The memorandum asks essentially three questions requiring interpretation of relevant law:

1. Is a person who works on the fish processing line of a mobile floating processor or catcher-processor required to hold a commercial fishing license?
2. Are crewmembers on a tender or mobile floating processor required to hold commercial fishing licenses?
3. Must the skipper or crew of a freight vessel hauling processed fish to market for sale hold a commercial fishing license?

A subsidiary question raised by the memorandum is whether the definition of "fish" in AS 16.05.940(10), as that term is used in the licensing requirement at AS 16.05.480 and in the definition of "commercial fishing" in AS 16.05.940(5), includes fish that are already dead or processed.

Our summary response to these questions is that an employee on a mobile floating processor or catcher-processor whose sole function is to work on the fish processing line (gutting, packing, or maintaining freezing equipment, etc.) and who does not engage in actual fishing activities (setting and hauling nets, operating and repairing gear) or in the navigation and operation of the vessel (independent of its processing functions) is not required to obtain a commercial fishing license. However, if that person, in addition to mere processing of fish, also engages in fishing activities or activities related

to the navigation or operation of the vessel itself, he must obtain a commercial fishing license. Crewmembers engaged in the operation and navigation of tenders or mobile floating processors that transport unprocessed fish must obtain commercial fishing licenses. The skipper or crew of a freight vessel used only to transport processed fish need not hold a commercial fishing license. Our analysis follows.

1. Commercial fishing license requirement.

The genesis of your inquiry is AS 16.05.480(a), which requires every person engaged in "commercial fishing" in waters subject to Alaska's jurisdiction to obtain a commercial fishing license from the state. 1/ This provision has existed in virtually identical form since the first state fish and game code was enacted in 1959. 2/

The term "commercial fishing" is defined in AS 16.05.940(5) as follows:

(5) "commercial fishing" means the taking, fishing for, or possession of fish, shellfish, or other fishery resources with the intent of disposing of them for profit, or by sale, barter, trade, or in commercial channels; the failure to have a valid

1/ The full text of AS 16.05.480(a) provides:

Sec. 16.05.480. Commercial fishing licenses. (a) A person engaged in commercial fishing shall obtain a commercial fishing license. The fee for the license is \$30 for residents, and \$90 for nonresidents. Except for those which are also entry or interim-use permits, all commercial fishing licenses are nontransferable. The commercial fishing license shall be retained in the possession of the licensee, readily accessible for inspection at all times. No more than one fee may be charged annually against a person. For the purposes of this section, "commercial fishing license" includes entry permits and interim-use permits issued under AS 16.43 and crewmember fishing licenses.

2/ Sec. 6, art. III, ch. 94, SLA 1959.

subsistence permit in possession, if required by statute or regulation, is considered prima facie evidence of commercial fishing if commercial fishing gear as specified by regulation is involved in the taking, fishing for, or possession of fish, shellfish, or other fish resources;

This definition, with the exception of reference to the failure to have a valid subsistence permit in possession, has also existed in virtually the same form since statehood. 3/

On its face, AS 16.05.480(a), as its terms are defined in AS 16.05.940(5), requires a commercial fishing license only of those persons who are actually taking, fishing for, or possessing fishery resources with the intent of selling them.

As explained in 1984 Inf. Op. Att'y Gen. (Feb. 22; 166-358-84), "possession" of fish requires a degree of ownership or control. A person who merely works on a processing line at a cannery and whose sole function is to process fish does not exercise the requisite indicia of possession to fit within the meaning of a person "taking, fishing for, or possessing" fish to require a license. See cases cited in 1984 Inf. Op. Att'y Gen., supra. In this regard, the principle of statutory construction that when legislative intent is unclear, the meaning of doubtful words may be determined by referring to associated words (noscitur a sociis) is applicable, as explained below. See 2A N. Singer Sutherland Statutory Construction, §47.16 (4th ed. 1984); see also State, Real Estate Comm'n v. Johnston, 682 P.2d 383, 386-87 (Alaska 1984).

To the extent that the word "possession" in AS 16.05.940(5) is unclear, it should be interpreted in light of the related terms "taking" and "fishing" for fish. 4/ In this

3/ Sec. 2(n), art. I, ch. 94, SLA 1959.

4/ The term "take" is defined in AS 16.05.940(31) as follows:

(3) "take" means taking, pursuing, hunting, fishing, trapping, or in any manner disturbing, capturing, or killing or attempting to take,
(Footnote continued)

context, we believe "possession" of fish should be interpreted to mean possession that is associated with fishing activities, i.e., exercising some control over the fish, as opposed to mere handling of fish in a processing plant. We believe this applies regardless of whether the worker is processing fish on board a floating or a stationary processing vessel. 5/ Similarly, a person who is merely processing fish on board a catcher-processor and who does no other function related to fishing or the operation of the vessel, would not require a commercial fishing license. 6/

2. Definition of "commercial fisherman."

The above conclusions are consistent with the interpretation of AS 23.35 articulated in 1982 Inf. Op. Att'y Gen. (Nov. 15; 366-252-83), that employees processing fish on floating processors are not "commercial fishing" and hence do not qualify for "fisherman's fund" benefits. (Copy of memorandum attached). That memorandum noted, however, that "the [D]epartment [of Fish and Game] has been advising owners of processors to purchase commercial fishing licenses for those persons employed on board although the law is not perfectly clear on that requirement."

The ambiguity regarding whether employees on floating cannery vessels or fish processors are "commercial fishing" derives from the statutory definition of "commercial fisherman" set out at AS 16.05.940(4):

(4) "commercial fisherman" means an individual who fishes commercially for, takes, or attempts to

(Footnote continued)

pursue, hunt, fish, trap, or in any manner capture or kill fish or game;

5/ To the extent that this conclusion departs from that reached in 1984 Inf. Op. Att'y Gen. (Feb. 22; 166-350-84), the earlier memorandum is hereby overruled on this point only.

6/ We recognize that on many catcher processors, crewmembers participate at times in all aspects of the operation -- both fishing and processing. These crewmembers would require a license.

take fish, shellfish, or other fishery resources of the state by any means, and includes every individual aboard a boat operated for fishing purposes who participates directly or indirectly in the taking of these raw fishery products, whether participation is on shares or as an employee or otherwise; however, this definition does not apply to anyone aboard a licensed vessel as a visitor or guest who does not directly or indirectly participate in the taking; and the term "commercial fisherman" includes the crews of tenders or other floating craft used in transporting fish;

The term "commercial fisherman" is not actually used in AS 16.05.480(a) nor in AS 16.05.940(5), the operative provisions that require a person engaged in "commercial fishing" to obtain a commercial fishing license. However, the existence of the definition in AS 16, and its ostensibly broad application to "the crews of floating craft used in transporting fish," raises some question as to whether employees who work on fish processing lines aboard vessels are "commercial fishermen" and whether that definition correlates precisely with the definition of "commercial fishing" in AS 16.05.940(5).

The relationship between the definition of "commercial fisherman" in AS 16.05.940(4) and the class of persons who must obtain commercial fishing licenses is fortified by two factors: (1) the legislative history of the term and (2) interpretive regulations.

First, the statutory definition of "commercial fisherman" in AS 16.05.940(4) derives from section 2(o), ch. 94, SLA 1959. 7/ The present statutory requirement regarding

7/ The text of that definition provided:

(o) "Commercial fisherman": an individual who fishes commercially for, takes or attempts to take fish, shellfish, or other fishery resources of Alaska by any means, and including every individual aboard boats operated for fishing
(Footnote continued)

commercial fishing licenses derives from section 6, article III, ch. 94, SLA 1959, which provided:

Sec. 6. Commercial Fishing License. A commercial fishing license shall be obtained by each and every individual before he shall become engaged as a fisherman as above defined. The fee for such license shall be \$10.00 for residents, and \$15.00 for non-residents.

There is no definition of "fisherman" in ch. 94, SLA 1959; however, there is the above definition of "commercial fisherman" set out in section 2(o), article III, ch. 94, SLA 1959, and logically this must be the definition referred to in section 6. Thus, unlike the present statutory language at AS 16.05.480(a) that requires commercial fishing licenses of people engaged in "commercial fishing," the statutory language from which this provision derives did reference the definition of "commercial fisherman," and each "commercial fisherman" had to obtain a license.

Although we have found no legislative history that sheds light on the reason for the language change from section 6, article III, ch. 94, SLA 1959 to the language now in AS 16.05.480(a), it does not appear that there was any legislative intent to divorce the statutory license requirement in AS 16.05.480(a) from the definition of "commercial fisherman." Hence we believe that the current definition of "commercial fisherman" should be read in harmony with AS 16.05.480(a) and be a guide in interpreting who must obtain a license.

(Footnote continued)

purposes who participates directly or indirectly in the taking of the raw fishery products above mentioned, whether such participation be on shares or as employee or otherwise; provided, however, this shall not apply to anyone aboard a licensed vessel merely as a visitor or guest who does not directly or indirectly participate in the said taking. The term "commercial fisherman" shall also include the crews of tenders or other floating craft used in transporting fish.

The above conclusion is strengthened also by the fact that the board of fisheries has adopted a regulation, 5 AAC 39.110(a), that requires a "commercial fisherman" who does not hold a valid interim-use or entry permit to obtain a "crew member fishing license." 8/ In the absence of any discreet definition of "commercial fisherman" in the administrative code, we interpret this term in light of the statutory definition of "commercial fisherman" in AS 16.05.940(4). We also read "crewmember fishing license" as included within the definition of "commercial fishing license" in AS 16.05.480(a). 9/

Based upon the above analysis, we believe that the definition of "commercial fisherman" in AS 16.05.940(4) should be a guideline in determining who is "commercial fishing" and hence required to obtain a commercial fishing license. However, although the definition of "commercial fisherman" appears to cover broadly the "crews of tenders or other floating craft used in transporting fish," we do not find that this covers employees aboard floating craft who merely process fish and who do not engage in the operation or navigation of the vessel. This

8/ The text of 5 AAC 39.110(a) provides:

5 AAC 39.110. Crew member fishing license requirements. (a) Each commercial fisherman who does not hold a valid interim-use or entry permit card issued by the Commercial Fisheries Entry Commission shall obtain a crewmember fishing license before fishing in any waters of Alaska. A crew member fishing license is not required for the holder of a valid interim-use or entry permit card.

9/ As 16.05.480 specifies that "'commercial fishing license' includes entry permits and interim-use permits issued under AS 16.43 and crewmember fishing licenses." The term "crew" is defined in 5 AAC 39.110(e) as:

(e) In this section, "crew" means the activities of a commercial fisherman as defined in AS 16.05.940(4), who is actively engaged in the operation of fishing gear that is being operated in the manner described in 5 AAC 39.107.

conclusion is based upon a review of the statutory scheme as a whole and a reading of associated words within the definition of "commercial fisherman," explained below.

3. Scope of "crews of other floating craft used to transport fish."

First, as discussed above, we do not view AS 16.05.480(a), standing alone, as requiring persons who merely process fish to hold a commercial fishing license. The statutory definition of "commercial fisherman," while, as explained above, relevant in interpreting who must hold a license, should be construed in harmony with the terms used in AS 16.05.480(a). See generally State v. First Nat. Bank of Anchorage, 660 P.2d 406, 413 (Alaska 1982).

Second, reading doubtful words in harmony with associated words in AS 16.05.940(4), we believe that "tenders or other floating craft used in transporting fish" relates to craft used in taking and transporting raw, rather than fully processed fish. AS 16.05.940(4) specifies that "commercial fisherman" "includes every individual aboard a boat operated for fishing purposes who participates directly or indirectly in the taking of these raw fishery products ..." (Emphasis added). Since tenders transport raw fish, we believe that the term "tenders and other floating craft used in transporting fish" must be read in association with the rest of AS 16.05.940(4) to refer to vessels used to transport raw or partially processed fish, as opposed to barges carrying fully processed fishery products to market. ^{10/} We also do not view an employee on a processing vessel who merely processes fish and does not engage in other aspects of the

^{10/} Captain Nutgrass had requested in particular an interpretation of the word "fish" defined in AS 16.05.940(10); he suggested that if "fish" includes dead (processed) fish, by logical extension "personnel of airlines and freight companies transporting fish to market would be required to have commercial fishing licenses." For the reasons stated above, we conclude that in context, the term "fish" as used in AS 16.05.940(4) does not include fully processed fish. However, we also believe that the general definition of "fish" in AS 16.05.940(10) (which includes fish "in any stage of its life cycle") does include dead and processed fish, unless the context otherwise provides.

Col. Jack Jordan, Director
Division of Fish & Wildlife Protection
661-87-0428

October 20, 1987
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vessel's operation to be a "crewmember" within the meaning of a person engaged in "commercial fishing." Such a broad interpretation would not harmonize with the other language (discussed above) in AS 16.05.940(4) and AS 16.05.940(5). 11/

4. Summary.

In summary, your specific questions and our answers are as follows:

Q.1. Is a person who works on the fish processing line of a mobile floating processor or catcher-processor required to hold a commercial fishing license?

A. No, so long as the person does not engage in any

11/ It may be of some use to compare certain other state and federal laws that distinguish between crewmembers who operate vessels and other employees aboard. For example, the Fair Labor Standards Act provides certain exceptions from minimum wage requirements for employees who process, can, or pack fish or shell fish "at sea as an incident to ... fishing operations" (29 U.S.C. §213(a)(5)), and for "seamen." (29 U.S.C. §213(b)(6)). The latter term is defined as an employee who performs "service which is rendered primarily as an aid in the operation of [a] vessel as a means of transportation, provided he performs no substantial amount of work of a different character." 29 C.F.R. §783.31. See also 29 C.F.R. §783.32. And see Worthington v. Icicle Seafoods, Inc., 796 F.2d 337, 338 (9th Cir. 1986). Under Alaska law, the minimum wage exemption only applies to "seamen." AS 23.10.060(12). Thus, in some areas of law, a distinction is made between the functions of seamen (who may be viewed as "crewmen") and employees who merely process fish. (However, compare citizenship requirements for "seamen" on certain large documented vessels. 46 U.S.C. §8103(b) and 46 U.S.C. §8701(a)(7) and (b). The term "seamen" is not defined in these statutes and there appears to be a difference of interpretation as to whether the term "seamen" applies only to the deck crew and persons in a position directly related to navigation, or to any employee engaged in any capacity on the vessel. See e.g. definition of "seamen" under merchant seamen protection and relief law, 46 U.S.C. §10101(3))

Col. Jack Jordan, Director
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activities relating to operation and navigation of the vessel (other than processing).

Q.2. Do crewmembers on a tender or mobile floating processor require a commercial fishing license?

A. Yes, but in context a "crewmember" does not include a person whose sole activity is processing fish.

Q.3. Must the skipper or crew of a freight vessel hauling processed fish to market for sale hold a commercial fishing license?

A. No.

I hope this answers all the questions raised in Captain Nutgrass's request. If we can be of further assistance on this matter, please let us know.

SEM/jmo

cc: Hon. Don W. Collinsworth, Comm'r, ADF&G
Norman Cohen, Deputy Comm'r,
Ken Parker, Dir., Div. of Comm'l Fisheries
Bob Clasby, Comm'l Fisheries
Larri I. Spengler, AGO
Lance Nelson, AGO

a:JORDAN.MOA

MEMORANDUM

State of Alaska

TO: Lt. Col. Tetzlaff
Div. of Fish & Wildlife
Protection
Dept. of Public Safety

DATE: February 22, 1984

FILE NO: 166-358-84

TELEPHONE NO: 276-3550

FROM: Norman C. Gorsuch
Attorney General

SUBJECT: Commercial Fishery
Licenses

By: Kathleen McGuire *KMG*
Assistant Attorney General

You requested an opinion as to whether workers assigned to shore-based canneries must possess a commercial fishing license under AS 16.05.480.

The summary answer is that shore-based cannery workers do not need a commercial fishing license. AS 16.05.480(a) provides in part that "a person engaged in commercial fishing shall obtain a commercial fishing license" and AS 16.05.940(2) defines a commercial fisherman as "every individual aboard a boat operated for fishing purposes..." which includes "the crew of tenders or other floating craft used in transporting fish."

The two statutes read together make it clear that employees of canneries attached to land do not need commercial fishing licenses because they are not aboard a boat that is transporting fish. However, employees aboard floating processors that transport fish do require commercial fishing licenses.

Specifically, you have asked whether employees of shore-based but floating cannery are required to hold a commercial fishing license under AS 16.05.480(a). Two types of canneries are prevalent in Alaska: shore-based and floating. For tax purposes, AS 43.75.140(5) and (6) define shore-based canneries as including floating craft that are permanently attached to land, or remain in the same location in the state for an entire tax year. 1/

1/ AS 43.75.015 provides tax advantages to processors that are shore-based. AS 43.75.140 extinguishes those tax advantages, if the processors move their location. Because of the tax advantage, few shore-based canneries will be moving. However, if the shore-based canneries do move they are considered floating processors and their employees would be required to hold commercial fishing licenses under AS 16.05.480(a).

Lt. Col. Tetzlaff
Div. of Fish & Wildlife Protection
166-358-84

February 22, 1984
Page 2

Based upon the above definitions, the employees of a floating shore-based facility would be exempt under the definition of "commercial fisherman" in AS 16.05.940(2) because the floating shore-based facility would not be used for "transporting" fish because it must remain in the same location all year.

The employees of a floating shore-based facility would also be exempt under the definition of "commercial fishing" in AS 16.05.940(3). AS 16.05.940(3) defines possessing fish as commercial fishing. Although cannery workers handle fish, they are not in possession. Tinglev v. Brown, 380 So.2d 1289 (Fla. 1980). Possession requires a degree of ownership or control. Florida v. Brider, 386 So.2d 818, 819 (Fla. Dist. Ct. App. 1980). Cannery workers universally do not have ownership or control of the fish they handle.

CONCLUSION

Employees of shore-based floating canneries are not required to have a commercial fishing license. Employees of floating canneries are required to have a commercial fishing license.

KIM/ssr

MEMORANDUM

State of Alaska

TO: Glenn H. Lundell
Deputy Commissioner
Department of Labor


DATE: November 15, 1982

FILE NO: 366-252-83

TELEPHONE NO: 465-3603

FROM: Wilson L. Condon
Attorney General

SUBJECT: Interpretation of
Statute regarding
Workers on Fish
Processors

By: 
Gary I. Amendola
Assistant Attorney General

Under AS 23.35 and under the proper circumstances, "fishermen" can obtain medical and related benefits through a fund known as the "fisherman's fund". You have asked whether fish processing employees injured while working on a fish processor qualify for fisherman's fund benefits. You have also asked, in the event that the answer is in the affirmative, whether only specific employees on the processor are entitled to those benefits.

AS 23.35.070 states:

BENEFITS. A fisherman, upon becoming disabled, is entitled to receive benefits as follows: Immediately after he sustains an injury or disability arising out of an accident directly connected with his operations as a fisherman, either ashore, in the state, or in Alaska water, or suffers an occupational disease, the fisherman is entitled to emergency treatment, transportation to the nearest place where approved medical facilities are available, medical care and hospitalization. As used in this section, "Alaska water" means the inland and territorial water of the state and the fishery conservation zone adjacent to the state established by sec. 101 of the Fishery Conservation and Management Act of 1976, P.L. 94-265 (16 U.S.C. 1801 et seq.).

AS 23.35.080 -- AS 23.35.140 indicate the extent of other benefits offered, the manner in which the benefits may be provided, and the time and monetary limitations on benefits.

AS 23.35.150(4) reads:

"fisherman" means a person who is licensed by the state to engage in commercial fishing under

Glenn H. Lundell, Deputy Commissioner
Department of Labor
366-252-83

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Page 2

AS 16.05.480 or who is the holder of a permit issued under AS 16.43 and who, at the time injury is sustained or illness is contracted, is actually so engaged or is occupied in Alaska in preparing or dismantling boats or gear used in commercial fishing.

I am advised by representatives of the Department of Revenue that all crewmembers on board a floating fish processor are required to have commercial fishing licenses.

I am advised by representatives of the Department of Fish and Game that all persons working on board a harvester/processor and on board tenders are required to have commercial fishing licenses. See AS 16.05.480 and AS 16.05.940(2). The department has been advising owners of processors to purchase commercial fishing licenses for those persons employed on board although the law is not perfectly clear on that requirement. For purposes of this opinion, however, the resolution of that particular issue is not necessary.

In order to qualify as a "fisherman" under AS 23.35 and therefore qualify for "fisherman's fund" benefits, a person must not only be licensed to engage in commercial fishing or be the holder of a limited entry permit, the person must also at the time the injury is sustained or illness is contracted, (1) be engaged in commercial fishing, or (2) occupied in Alaska preparing or dismantling boats or gear used in commercial fishing.

The "plain meaning" rule of statutory construction requires that an unambiguous statute be read to mean what it clearly expresses. There is thus no need to interpret it except to the extent that the words themselves have inexact meaning. State v. Alex, 646 P.2d 203, 208, n.4 (Alaska 1982); Application of Babcock, 387 P.2d 694, 696 n.6 (Alaska 1963); 2A Sutherland, Statutes and Statutory Construction, § 46.01, at 48-49 (4th Ed. Sands, 1973). There is little question that employees on fish processors are not commercial fishing nor occupied in Alaska preparing or dismantling boats or gear used in commercial fishing.

However, to the extent one could argue otherwise, reference to related statutes in order to interpret a particular statute is customary if there is some ambiguity perceived. 2A Sutherland, Statutes and Statutory Construction, § 51.01, at 287-289 (4th Ed. Sands, 1973). The fish and game statute which

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366-252-83

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Page 3

defines "commercial fishing" does not include employees on fish processors. AS 16.05.940(3) states:

"commercial fishing" means the taking, fishing for, or possession of fish, shellfish or other fishery resources with the intent of disposing of them for profit, or by sale, barter, trade, or in commercial channels; the failure to have a valid subsistence permit in possession, if required by statute or regulation, is considered prima facie evidence of commercial fishing if commercial fishing gear as specified by regulation is involved in the taking, fishing for, or possession of fish, shellfish or other fish resources.

It is our view, therefore, that employees processing fish on a floating processor are not "commercial fishing" and do not qualify for "fisherman's fund" benefits.

GIA/bap

AS 16.05.480(a)
AS 16.05.940

WORKERS AT SHORE-BASED CANNERIES NEED
NOT POSSESS COMMERCIAL FISHING LICENSE.

In response to an inquiry from the division of fish and wildlife protection, the Attorney General stated that an employee of a shore-based floating cannery is not required to have a commercial fishing license, but that an employee of a floating cannery is required to have a commercial fishing license. The Attorney General stated that the definition of "commercial fisherman" includes "the crew of tenders or other floating craft used in transporting fish" (AS 16.05.940(4)). Therefore, those who transport fish must have the license; those who don't transport fish need not have the license, the Attorney General concluded. AS 16.05.480 requires that a person "engaged in commercial fishing" obtain a commercial fishing license. The definition of "commercial fishing" does not include "transporting" (AS 16.05.940(5)). Thus, one must have a commercial fishing license if one is engaged in commercial fishing, regardless of whether one is a commercial fisherman or is involved in transporting. In a previous opinion the Attorney General stated that "there is little question that employees on fish processors are not commercial fishing . . ." Op. Atty. Gen. (Alaska, November 15, 1982). On that basis, the Attorney General concluded that processor employees were not entitled to benefits of the fisherman's fund. Now, however, the Attorney General is saying that employees on floating processors are engaged in commercial fishing. Op. Atty. Gen. (Alaska, February 22, 1984)

The intent of the Legislature is not clear. The Attorney General has construed the law in an apparently inconsistent manner, saying that certain persons must have a license because they are engaged in commercial fishing, but they should be denied fisherman's fund benefits because they are not engaged in commercial fishing. Legislative review is recommended.

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AN ACT
Exempting commercial fishermen from workers'
compensation coverage.

* Section 1. AS 23.30.230 is amended by adding a new subsection to read:

(b) A commercial fisherman, as defined in AS 16.05.940, is not covered by this chapter.

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY
LEGISLATIVE REFERENCE LIBRARY

POUCHY - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

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

HL+C

4-26-88

1:30 p.m.



Official Business

DATE: April 26, 1988

SIGN-IN

- HB 544 Contractor bonds/public buildings and works
- SB 61 Civil liability for plane inspection
- SB 61 Rehire of injured state employees
- SB 309 Definition of commercial fisherman
- SB 211 Civil liability
- SB 461 Liability of hospitals for nonemployees

PLEASE PRINT
NAME & TITLE

REPRESENTING

ADDRESS & ZIP

PHONE

DO YOU WANT
TO TESTIFY?

SUBJECT:
BILL #

✓ Sharon Anderson	Humana Hospital		H W 276-1131	Yes	SB 461
✓ Adrienne Anderson	Nat'l Campaign Against Toxic Hazards	1266 Cook St. Denver Colorado 80206	H W ³⁰³ 333-9714	YES	SB 211 SB 461
✓ Jeff Steffen	DOT & PF	P.O. Box 7 JUNEAU	H W 465-2151	IF NEEDED	HB 558
Karl Ohls	Sen. Zharoff	P.O. Box V, Juneau	H W 465-4922	Yes, if needed	SB 309
✓ David McGuire	Citizens Coalition for reform	4501 Laurel	H 349-1752 W 562-4142	yes	SB 211 SB 461
✓ Au Gross	ATL	8470 N. D. ...	H W	yes	SB 211
✓ Paul Roller	D.O.I		H W 465-2513	Yes	
RICHARD RITTER	AMERICAN INST. of ARCHITECTS	800 GLACIER AVE., JUNEAU	H W 586-1371	YES, IF NEEDED	SB 211
MARY KANCEWICZ	AFL	Assembly Bldg	H W	yes	SB 211
			H W		

NEEDS TO TESTIFY TODAY WON'T BE IN JUNE 4/27
Must also testify today before S



Official Business

COMMITTEE
HOUSE LABOR & COMMERCE
DATE: April 26, 1988

SIGN-IN

- SB 199 License exemption; boat trailer dealers
- SB 223 Civil liability of zoos/zoo operators
- HB 558 Contractor bonds/public buildings and works
- HB 544 Civil liability for plane inspection
- SB 61 Rehire of injured state employees
- SB 309 Definition of commercial fisherman
- SB 211 Civil liability
- SB 461 Liability of hospitals for nonemployees

PLEASE PRINT
NAME & TITLE

REPRESENTING

ADDRESS & ZIP

PHONE

**DO YOU WANT
TO TESTIFY?**

**SUBJECT:
BILL #**

SHERIE GOLL	ALASKA WOMEN'S LOBBY	419 Kennedy Street, Sino 99511	H W 586-4788	YES	SB 211
Bob Davitt	AARP State Legis- lative Comm.	130 Deward St # 205-99801	H W 586-2066	yes	211/461
Kym Chase	Providence Hosp	3200 Prov Dr.	H 261 3101 W	yes	211/461
John Vowell	Wrangell Hospital	P.O. 80 Wrangell	H W 874-3356	yes	211/461
Kent Dawson	AK Trial Lawyers	Juneau	H W 586-2667	NO	211/461
			H W		
			H W		
			H W		
			H W		
			H W		

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HOUSE COMMITTEE REPORT

(7)

Date referred: 2/26/88

FURTHER REFERRALS: Judiciary

DATE: 3/15/88

The Labor & Commerce Committee has considered CSSB 322(L&C)

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

RECOMMENDS:

- replace with HCS CS SB322(L&C) 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 _____
- zero with analysis

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

David Douley (NO REC)

W. L. Kaper (no rec)

Sam H. ... (no rec)

Ellis (no rec)

...

David Douley
Chairman's signature

Original sponsor: Labor and Commerce
Committee

1 IN THE SENATE

BY THE LABOR AND
COMMERCE COMMITTEE

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

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

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

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

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

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

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

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

27 (2) reduce disincentives to return to work; and

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

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

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

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

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

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

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

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

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

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

9 * Sec. 4. AS 23.30.005 is amended by adding a new subsection to read:

10 (m) If a regulation adopted by the department and approved by a
11 majority of the full board is determined to be invalid by the state
12 supreme court, the department may adopt new regulations that conform
13 to the department's statutory authority as interpreted by the court.

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

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

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

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

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

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

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

28 (8) An annual insurance premium that exceeds \$2,000 may be
29 paid semiannually, if requested by the insured. The insurer shall

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 (D) the cost of reemployment benefits;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 (6) the date the plan will commence;

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

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

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

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

16 (1) on the job training;

17 (2) vocational training;

18 (3) academic training;

19 (4) self-employment; or

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

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

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

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

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

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

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

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

- 3 (1) keep appointments;
4 (2) maintain passing grades;
5 (3) attend designated programs;
6 (4) maintain contact with the rehabilitation specialist;
7 (5) cooperate with the rehabilitation specialist in devel-
8 oping a reemployment plan and participating in activities relating to
9 reemployability on a full-time basis;

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

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

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

25 (p) In this section

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

28 (2) "employability" means possessing the ability but not
29 necessarily the opportunity to engage in employment that is consistent

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

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

4 (A) area of residence;

5 (B) area of last employment;

6 (C) the state;

7 (D) other states;

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

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

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

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

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

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

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

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

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

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

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

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

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

7 (c) A claim for medical or surgical treatment is not valid and
8 enforceable against the employer unless, within 14 days following
9 treatment, the physician giving the treatment or the employee re-
10 ceiving it furnishes to the employer and the board notice of the
11 injury and treatment, preferably on a form prescribed by the board.
12 The board shall, however, excuse the failure to furnish notice within
13 14 days when it finds it to be in the interest of justice to do so,
14 and it may, upon application by a party in interest, make an award for
15 the reasonable value of the medical or surgical treatment so obtained
16 by the employee. A claim for a course of treatment requiring con-
17 tinuing and multiple treatments of a similar nature is not valid
18 unless the treatments are carried out under a written treatment plan
19 prescribed before the commencement of the course of treatment, com-
20 pleted and signed by the attending physician, and mailed to the em-
21 ployer within one week of the beginning of treatment. The treatment
22 plan must include objectives, modalities, and frequency of treatment.
23 The initial treatment plan may not include more than 20 visits in the
24 first 60 days. If more than 20 visits are required within the first
25 60 days, or more than four visits a month after the first 60 days, the
26 physician shall document the need for services in excess of the guide-
27 lines in the written treatment plan.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 determined by the board, time limitations notwithstanding.

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

3 (c) Before a hearing is scheduled, the party seeking a hearing
4 shall file a request for a hearing together with an affidavit stating
5 that the party has completed all necessary discovery, obtained all
6 necessary evidence, and is fully prepared for the hearing. An oppos-
7 ing party shall have 10 days after the hearing request is filed to
8 file a response. If a party opposes the hearing request, the board or
9 a board designee shall within 30 days of the filing of the opposition
10 conduct a prehearing conference and set a hearing date. If opposition
11 is not filed, a hearing shall be scheduled no later than 60 days after
12 the receipt of the hearing request. The board shall give each party
13 at least 10 days' notice of the hearing, either personally or by
14 certified mail. After a hearing has been scheduled, a continuance may
15 not be granted. After completion of the hearing the board shall close
16 the hearing record. Evidence or arguments filed after the conclusion
17 of the hearing may not be considered by the board, unless the board
18 determines that good cause exists for failure to complete the hearing
19 at the scheduled time. If a settlement agreement is reached by the
20 parties less than 14 days before the hearing, the parties shall appear
21 at the time of the scheduled hearing to state the terms of the settle-
22 ment agreement. Within 30 days after the hearing record closes, the
23 board shall file its decision. If the employer controverts a claim on
24 a board-prescribed controversion notice and the employee does not
25 request a hearing within two years following the filing of the con-
26 troversion notice, the claim is denied.

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

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

1 stress.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 earned in the state;

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

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

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

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

23 (1) area of residence;

24 (2) area of last employment;

25 (3) the state of residence; and

26 (4) the State of Alaska.

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

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

1 disability.

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

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

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

12 Sec. 23.30.190. COMPENSATION FOR PERMANENT PARTIAL IMPAIRMENT.

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

Degree of Actual Impairment	Adjustment Factor
0 - 5	0
6	0.060
7	0.120
8	0.180
9	0.240
10	0.300
11	0.333

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

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