

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672
5373 SLAB SB 309 - SB 322 (file 1) 995

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

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



Senate Labor and Commerce Committee

Senator Tim Kelly, Chairman

- DEPT OF LABOR -

SACAT

LIZ & MCLACKEN

FOR FILE

661-87-0428

603 CENS-X

503 309

Original sponsor: Zharoff

1 IN THE SENATE

BY THE LABOR AND
COMMERCE COMMITTEE

2 CS FOR SENATE BILL NO. 309 (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 the definition of commercial
7 fisherman under statutes regulating commercial fish-
8 ing."

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

10 * Section 1. AS 16.05.940(4) is amended to read:

11 (4) "commercial fisherman" means an individual who fishes
12 commercially for, takes, or attempts to take fish, shellfish, or other
13 fishery resources of the state by any means, and includes every indi-
14 vidual aboard a boat operated for fishing purposes who participates
15 directly or indirectly in the taking of these raw fishery products,
16 whether participation is on shares or as an employee or otherwise;
17 however, this definition does not apply to anyone aboard a licensed
18 vessel as a visitor or guest who does not directly or indirectly
19 participate in the taking; and the term "commercial fisherman" in-
20 cludes the crews of tenders or other floating craft used in transport-
21 ing fish, but does not include processing workers on floating fish
22 processing vessels who do not engage in fishing or in activities
23 related to navigation or operation of the vessel;

24
25 WHAT IF PROCESS WORKER HAS A COM'L LICENSE
26 CAN THEY CLAIM BENEFITS FROM FISHERMAN'S
27 FUND?
28
29

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

SEM
FROM: Sarah E. McCracken
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 16.05.430(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.

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
Division of Fish & Wildlife Protection
661-87-0428

October 20, 1987
Page 10

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



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

DISTRICT N

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

TO: Senator Tim Kelly
Chairman
Senate Labor and Commerce Committee

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

DATE: January 21, 1987

RE: 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". This amendment would correct an oversight that occurred with the passage of previous legislation in 1986, clear up an inconsistency in state statutes, and bring the statutes in line with a recent attorney general's opinion.

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.

The second major problem SB 309 addresses is to remedy an inconsistency in state law. As commercial fishermen, floating processing vessel workers have been required to hold commercial fishing licenses. The proceeds from the sales of commercial fishing licenses go to the Fishermen's Fund, a compensation program for injured commercial fishermen. Under a previous attorney general's opinion, however, floating processing workers are barred from receiving any benefits from the Fishermen's Fund. In the interest of basic fairness, people who receive no benefits from the fund should not be forced to pay into it.

A recent attorney general's opinion (attached), dated Oct. 20, 1987, straightened out much of the above by declaring that processing workers did not, in fact, need to have commercial fishing licenses. The attorney general determined 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". Still, there would no harm in amending the statute to reflect the present and, I believe, correct interpretation.

Backup information for SB 109 is attached in the following order:

1. 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.
2. 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.
3. Attorney General's opinion, dated Nov. 15, 1984, stating that floating processor workers do not qualify for Fishermen's Fund benefits.
4. 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.
5. Copies of the relevant state statutes, 16.05.480 (Commercial fishing license) and 16.05.940(4) (Definition of commercial fisherman).
6. Chapter 77 from the 1986 session laws, "An Act Exempting commercial fishermen from workers' compensation coverage."

MEMORANDUM

State of Alaska
DEPARTMENT OF LAW

①

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

SEM
FROM: Sarah E. McCracken
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.

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
Division of Fish & Wildlife Protection
661-87-0428

October 20, 1987
Page 10

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

2

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
By:

SUBJECT: Commercial Fishery
Licenses

KMG
Kathleen McGuire
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. Tingley 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

3

TO: Glenn H. Lundell
Deputy Commissioner
Department of Labor


DATE: November 15, 1982

FILE NO: 366-252-83

TELEPHONE NO: 465-3602

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

November 15, 1982
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

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

November 15, 1982
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

4

AS 16.05.480(a) WORKERS AT SHORE-BASED CANNERIES NEED
AS 16.05.940 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.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

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.

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: Macque McClintock Phone: 465-2790
Division: Workers' Compensation Date: 1/22/88
Approved by Commissioner: Jim Sampson Date: 1/22/88
Agency: Labor

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

SB

315

Alaska State Legislature



SENATOR
ARLISS STURGULEWSKI

Chairman, Senate Community and Regional Affairs Committee
Vice-Chairman, Senate Judiciary Committee
Member, Senate Resources Committee

2957 SHELDON JACKSON STREET
ANCHORAGE, ALASKA 99508

While in Juneau
P. O. BOX V
JUNEAU, ALASKA 99811
(907) 465-3818

Senate

M E M O R A N D U M

26 January 1988

TO: Senator Tim Kelly
Chairman, Senate Labor & Commerce Committee

FROM: Senator Arliss Sturgulewski

RE: Senate Bill 315

As you know, Senate Bill 315 "An Act relating to third party reimbursement for advanced nurse practitioner services" has been referred to the Senate Labor & Commerce Committee.

In 1982 the nurse practice act was substantially revised. That revision took regulation of the practice of nursing away from the state medical board and put it under a separate board of nursing. Two years later, in 1984, the regulation requiring a collaborative relationship between a nurse and a physician was repealed. That meant that nurses could practice (according to their certifications) independently of physicians.

The changes made in the 1982 revision of the nurse practice act and allowing nurses to practice independently reflect changes in health care policy occurring nationwide and in Alaska. Nurses are now considered professionals in their own right and are moving into more advanced types of health care. There is a feeling that by allowing nurses to practice independently the cost of health care can be kept down and that it is more efficient to refer up from nurses than down from doctors.

This legislation adds advanced nurse practitioners to the list of health care providers in AS 29.36.090 (d) which are to be paid directly by third party payers (insurance companies) for services provided within the scope of the providers' occupational license.

I am enclosing charts showing the types and practice settings of Alaskan nurse practitioners, a position statement by the organization of Alaskan Nurse Practitioners, and a statement from the American Academy of Nurse Practitioners summarizing findings of studies of nurse practitioners performances. In addition, I am attaching copies of the statutes and regulations pertaining to the practice of nursing.

This bill was heard before the Senate HESS Committee on 25 January 1988. At that time, there was testimony from Don Koch of the Department of Commerce and Economic Development stating the department's support of this legislation. The Department of Health and Social Services also provided the HESS Committee with a position statement of support for the bill. Copies of those position statements are attached.

I would appreciate your scheduling this legislation for a hearing as soon as is practicable. If there are any questions, please contact Melissa Fouse of my staff at 465-3818.

Table 1

Type of Nurse Practitioner Licensed and Residing in Alaska,
July, 1987*

Type of Practitioner	Number
Family Nurse Practitioner (includes 3 with other NP designations)	48
Certified Nurse Midwife (includes 7 with other NP designations)	25
Women's Health Care Practitioner (includes 3 with other NP designations)	22
Pediatric Nurse Practitioner	13
Adult Nurse Practitioner	9
Neonatal Nurse Practitioner	5
School Nurse Practitioner	5
Geriatric Nurse Practitioner	1
Psychiatric Nurse Practitioner	1
	129

*Each NP was given a single designation, although some were certified in several areas. If an NP was a CNM, this was considered her primary designation. If an FNP was also an ANP, the practitioner was included in the FNP group (since the FNP designation covers a broader age-range in clients).

Table 2

Practice Settings of Alaskan Nurse Practitioners

Type of Setting	Number
Currently unemployed	2
Retired	1
Independent Practice (whole or partial)	11
Clinic Setting	
Private Sector (MD on site)	31
Governmental or Native Corporation funded (MD may or may not be on site)	40
Hospital Setting	18
Faculty/Primary Teaching	9
School Nursing	6
Public Health Nursing	3
Corrections	2
Health Care Administration/Consulting	4
Infectious Disease Control Programs	2
	129

Table 3

Highest Nursing Degree of Licensed Nurse Practitioners, 1987

Type of Degree	Number
Diploma or Associate Degree	43
Bachelor's	38
Master's	48

AMERICAN ACADEMY OF NURSE PRACTITIONERS
179 PRINCETON BLVD. LOWELL, MA 01851 617 937-7343

Summarizing the findings of the numerous studies of nurse practitioner's performance in a variety of settings, the Congressional Budget Office concluded: Nurse practitioners have performed as well as physicians with respect to patient outcomes, proper diagnosis, management of specified medical conditions, and frequency of patient satisfaction.¹

Studies have shown that nurse practitioners rate high in consumer satisfaction.²

In a program initiated by the Pittsburgh Veterans Administration, before hiring a Pulmonary Clinical Nurse Specialist, they had 150 patients at home on oxygen. After evaluation by the Clinical Nurse Specialist, 50% of those patients were able to come off the oxygen. Of the remaining 50%, more up-to-date equipment was issued allowing better patient mobility and breathing.³

Review of studies comparing nurse practitioners and physicians led the Congressional Office of Technology Assessment to conclude: "NPs appear to have better communication, counseling, and interviewing skills than physicians have."⁴

The OTA study also states: "Malpractice insurance premiums and the incidence of malpractice claims indicate that patients are satisfied with NP care. Although insurance premiums for nurse practitioners are increasing, successful malpractice suits against them remain extremely rare."⁵

In a review of 26 studies comparing nurse practitioner performance to that of physicians, Prescott and Driscoll reported that nurse practitioners received higher scores than physicians on several variables. These included such areas as amount/depth of discussion regarding child health care, preventative health, & wellness; amount of advice, therapeutic listening, and support offered to patients; completeness of history and followup on history findings; completeness of physical examination and interviewing skills, and patient knowledge about the management plan given to them by the provider.⁶

In a review of 15 studies, Record concluded that between 75% and 80% of adult primary care services and up to 90% of pediatric primary care services could be performed by nurse practitioners.⁷

Productivity studies show that if a nurse practitioner is utilized efficiently, s/he could increase the productivity of a solo practice physician by approximately 70%.⁸

A review of several studies shows that the quality of care provided by NPs is as high as the care rendered by physicians for that range of skills which the NPs are trained to use. The quality of care comparison was measured by diagnosis, treatment, and patient outcomes.⁹

Robyn and Hadley report, ". . . it appears that patients respond favorably to the quality of treatment itself, as well as the tendency of nurse practitioners . . . to spend more time with them, to create a more relaxed atmosphere in which they (the patient) feel more comfortable asking questions which they might regard as too trivial for a physician."¹⁰

The Burlington Randomized Trial Study found that nurse practitioners made appropriate referrals when medical intervention was necessary.¹¹

Estimates of increases in the productivity of physician practices that include nurse practitioners range from 20 to 90 percent. The greatest increase in productivity results when the nurse practitioner has primary responsibilities for a subset of patients and refers complicated cases "up" to the physician rather than having the physician delegate routine problems "down" to the nurse practitioner.¹²

In the Burlington Randomized Trial Study, it was found that nurse practitioners were able to provide primary care services as safely and effectively as physicians.¹³

In a federal physician extender reimbursement experiment, it was found that physician/nurse practitioner teams provided a higher quality of care than physicians alone.¹⁴

References

- ¹ Congressional Budget Office, US Congress. **Physician Extenders: Their Current and Future Role in Medical Care Delivery.** Washington, D.C.: US Government Printing Office, April 1979.
- ² Kulal, Stephanie, Clever, Linda, "Acceptance of the Nurse Practitioner" *AM.J.Nursing* 1974 March pp 251-256.
- ³ Openbrier, Diana, **Cost Effectiveness and Quality Report with the use of a Pulmonary Clinical Nurse Practitioner in The Pittsburgh Veterans Administration.** Accepted for publication in the *Clinical Nurse Specialist* magazine. 1985.
- ⁴ Office of Technology Assessment, US Congress. **Nurse Practitioners, Physician Assistants, and Certified Nurse Midwives: A Policy Analysis.** Washington, D.C.: US Government Printing Office, December 1986, pp. 19.
- ⁵ *Ibid.* pp 20.
- ⁶ Prescott, P.A. and Driscoll, L. "Evaluating Nurse Practitioner Performance". *Nurse Practitioner* 1980, Vol. 5, PP. 28-32.
- ⁷ Record, J. C. (ed.) **Provided Requirements, Cost Savings and The New Health Practitioner in Primary Care: National Estimate for 1990 Contract 231-77-0077.** Washington, D.C.: DEHEW, 1979
- ⁸ Robyn, Dorothy; Hadley, Jack, "National Health Insurance and the New Health Occupations: Nurse Practitioners and Physicians Assistants" *Journal of Health Politics, Policy and Law* Vol. 5, No. 3, Fall 1980. pp 451.
- ⁹ *Ibid.* pp 459.
- ¹⁰ *Ibid.* pp 450.
- ¹¹ Sackett, D.L. et al. "The Burlington Randomized Trial of the Nurse Practitioners: Health Outcomes of Patients. *Annals of Internal Medicine.* 80:137, 1974.
- ¹² Smith, K.R., **Health Practitioners: Efficient Utilization and Cost of Health Care.**
- ¹³ Spitzer, W. O. et al "The Burlington Randomized Trial of the Nurse Practitioner" *N.ENG.J.MED.* 290:251-256, Jan. 31, 1976.
- ¹⁴ System Sciences, Inc. **Nurse Practitioners and the Physicians Assistant Training and Deployment Study: Final Report Contract No. HRA 230-75-0198.** Bethesda, MD: System Sciences, Inc., September, 1975.

NURSE PRACTITIONERS

PROVIDERS OF QUALITY PRIMARY HEALTH CARE

DOCUMENTATION ON QUALITY OF SERVICE

POSITION STATEMENT ON
THIRD PARTY REIMBURSEMENT FOR NURSE PRACTITIONERS
Prepared by P.E.E.R., the Organization
of Alaskan Nurse Practitioners
August, 1987

P.E.E.R.'s Position

P.E.E.R. strongly supports the policy of issuing direct third party payment as reimbursement for professional services rendered by all licensed Nurse Practitioners (NPs) in Alaska. The services offered by NPs are legally recognized by the State of Alaska in specific Nurse Practice Acts, and are equivalent, and in some cases, more holistic in approach, than services provided by physicians in primary care. Reimbursement for NP services would benefit the public by:

1. enabling NPs to establish independent practices and clinics by providing a mechanism to finance their businesses. Currently, most NPs are employed by physicians or other entities, in part because they CANNOT receive direct third party payment.
2. offering more freedom of choice to the public in their selection of competent health care providers.
3. potential reduction in health care costs through competition for provision of services.
4. potential expansion of health care services of NPs in the private sector in under-served areas.

The Significant Contribution of Nurse Practitioners in Alaska

Licensed NPs in Alaska are in sufficient numbers to deserve recognition as an important group of health care providers: as of July, 1987, 129 NPs were licensed and claimed residence in the state. Another 40 NPs are estimated to work in federal governmental agencies (such as Elmendorf Hospital or the Indian Health Service); they are not required to apply for state licences in order to practice. This section describes only the licensed NPs.

Family nurse practitioners outnumber the other eight types of nurse practitioners in Alaska (Table 1). Nurse practitioners impact health care services in Alaska in a variety of work settings (Table 2). Only eleven are in independent practice; of those, six practice in rural settings. Independent practice became an option in December, 1984, with the passing of the new regulations that included placement of NPs under the sole jurisdiction of the Alaska Board of Nursing. Five of the independent practitioners are nurse midwives, who may collect fees from third party payers as stipulated in Alaska Statutes, Sec. 47.07.030--others may not, or do so with difficulty.

The majority of Alaskan NPs hold a Bachelor's or Master's

degree in nursing (86) in addition to their specialized nurse practitioner training, and certification through national certifying bodies (Table 3). In contrast to R.N. degree status for entry into NP training programs in the 1960s, the current national trend is for that training to take place in conjunction with Master's degree preparation, illustrated by the Family Nurse Practitioner program at the University of Alaska's College of Nursing and Health Sciences.

No studies have been conducted in Alaska to assess the quality of care provided by nurse practitioners, nor how their care might differ from that of a physician. Numerous studies in the lower 48, however, have shown that . . . "within their areas of competence, nurse practitioners provide care whose quality is equivalent to that of care provided by physicians", and that patients are generally satisfied with their care (US Congress, Office of Technology Assessment, 1986, pages 5-6). The American Academy of Nurse Practitioners provides a summary of the recent studies documenting the quality of services provided by NPs (addendum 1; also cites the OTA study mentioned above).

Alaskan NPs have demonstrated their willingness to work in under-served rural areas in Alaska: 51 of the currently employed 126 state-licensed NPs work in settings other than in Anchorage, Fairbanks, or Juneau. Their jobs entail multiple responsibilities and require high levels of expertise (see addendum 2 for an example of the rural practice of one NP).

The National Trends

Congress continues to consider a variety of proposals to mandate third party reimbursement for NPs. So far, federally mandated payments are limited to a few State Medicaid programs, Champus, and some programs in the Federal Employees Health Benefit Program (refer to Appendix B, US Congress, Office of Technology Assessment, 1986). At least 13 states currently permit direct payment for NP services, including Washington and Oregon, states also supporting the independent practice of NPs.

Conclusion and Our Recommendations

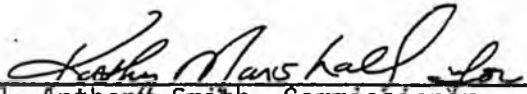
We contend that without direct reimbursement to NPs in the State of Alaska, the practice settings of NPs are limited, which in turn, effectively limits competition among providers, patient choices of providers, and ultimately, adversely impacts upon health care costs. We therefore recommend that:

1. third party insurers voluntarily offer to provide direct reimbursement for NP services, and/or that
2. the state legislature amend the statutes to mandate such reimbursement to all licensed NPs, not just to nurse midwives as is now the case.

Thanks is extended to Gail McGuill, Executive Director, Alaska Board of Nursing, for her assistance in obtaining the NP data.

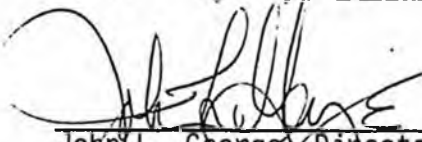
SB 315: "An Act relating to third party reimbursement for advanced nurse practitioner services."

The Administration supports this bill. This bill is aimed at allowing advanced nurse practitioners the ability to bill and receive third party reimbursement for their services. This generally means a disability insurer or a hospital/medical service corporation. The aim is accomplished with a simple modification of AS 21.36.090(d). It is appropriate for a medical practitioner to have access to reimbursement by an insurance company if the coverage provided by the insurer can be performed within the scope of that practitioner's occupational license.



J. Anthony Smith, Commissioner
Department of Commerce & Economic
Development

Date: 1/25/88



John L. George, Director of Insurance

Date: 1/25/88

FISCAL NOTE

REQUEST:

Revision Date: 01/11/88 Agency Affected: Commerce & Econ. Dev.
 Title: Third party reimbursement for
advanced nurse practitioners services BRU: Insurance
 Sponsor: Sturgulewski Components: Public Protection
 Requester: _____

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	0.0	0.0	0.0	0.0	0.0	0.0
---------	-----	-----	-----	-----	-----	-----

REVENUE	0.0	0.0	0.0	0.0	0.0	0.0
---------	-----	-----	-----	-----	-----	-----

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	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: John L. George, Director Phone: 465-2515
 Division: Division of Insurance Date: January 25, 1988
 Approved by Commissioner: J. Anthony Smith Date: January 25, 1988
 Agency: Department of Commerce and Economic Development

Distribution (by preparer):

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

0642K-3/12588a

Position Paper

SB 315

For an Act entitled: "An Act relating to third party reimbursement for advanced nurse practitioner services."

This Act amends Section 1. AS 21.36.090(d) to include the advanced nurse practitioner as a provider eligible for third-party reimbursement for services provided within the scope of the occupational license.

Background

The professional nurse practitioner provides direct patient care to individuals, families, and other groups in a variety of public health settings. In some cases, the nurse practitioner engages in independent decision making about the needs of clients and collaborates with other health professionals such as the physician, psychologist, social worker, and nutritionist in making decisions about other health needs. The nurse practitioner working in an expanded role practices in primary, acute, and chronic health care settings. As a member of the health care team, the nurse practitioner plans and institutes health care programs.

In the past two decades, the number of nurse practitioners and their responsibilities for providing care to patients have increased. Today approximately 15,400 nurse practitioners are practicing in the United States; 170 are certified to practice in Alaska. The use of nurse practitioners affects the quality of care, access to care, productivity of providers, and the costs of care.

The weight of evidence indicates that within their areas of competencies, nurse practitioners provide care comparable in quality to that provided by physicians. This determination is made by examining patient satisfaction with care provided by nurse practitioners and assessing physicians' acceptance of such care.

In addition to improving access to care in underserved populations and areas, nurse practitioners provide care in certain institutional settings, such as jails, and to specific populations, such the elderly and poor women and their infants. Nurse practitioners also affect access (as well as quality) by providing person-oriented services, such as communicating thoroughly with patients, counseling, promoting self-help, and attending to patients' emotional needs. Nurse practitioners reduce financial barriers to access by providing care at relatively low cost. Productivity studies indicate that nurse practitioners working under physicians' supervision can increase the total practice output by some 20-50 percent.

Although the evidence indicates that nurse practitioners have made positive contributions to the delivery of health care, these practitioners have not been used to their fullest potential. Major obstacles to the greater employment and appropriate use of nurse practitioners have been that

most third-party payers do not cover many services that are typically and characteristically provided by physicians. In these instances, payments are often indirect (i.e., to the employing physician or institution rather than direct to the nurse practitioner).

Impact of Bill

Third-party payment to nurse practitioners for providing services typically and characteristically performed by physicians will dramatically increase the nurse practitioner's ability to establish fee-for-service practices as autonomous providers independent from physicians. Advanced nurse practitioners could provide the full range of services for which they are trained and licensed. Passage of this bill would encourage the employment of advanced nurse practitioners within community mental health centers, particularly in areas of the state in which recruitment of other mental health professionals has been difficult.

The effects of third-party reimbursement of nurse practitioners and paying directly for their services would undoubtedly be influenced by the markets for their services. For example, some third-party payers are paying prospectively for hospital in-patient services (e.g., Medicare is paying on the basis of diagnosis related groups), and capitation is a growing mode of payment. These changes, along with the fact that an increasing proportion of the population is age 65 or older and thus in need of a significant amount of health care services, have major implications for the employment of nurse practitioners and health care costs.

Position

The Department of Health and Social Services supports this bill. Third-party reimbursement for services of advanced nurse practitioners could benefit the health status of certain segments of the population currently not receiving adequate care.

Recommended by: Elizabeth Ward
Elizabeth Ward, Director
Division of Public Health

Date: January 22, 1988

Approved by: Myra M. Munson
Myra M. Munson, Commissioner
Department of Health and
Social Services

Date: Jan 22, 1988

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An Act relating to third
party reimbursement...
Sponsor: Sturgulewski
Requestor: _____

Agency Affected: Health & Social Services
BRU: State Health Services
Components: Nursing

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						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

The enactment of SB 315 would have no direct fiscal impact on the Department of Health and Social Services.

Prepared by: Elizabeth Ward, Director *Elizabeth Ward* Phone: 465-3090
Division: Public Health Date: 1-13-88

Approved by Commissioner: *Karen Pedue* Date: 1/22/88
Agency: Department of Health & Social Services

Distribution (by preparer):

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

SB

322

(FILE 1-DRAFTS)

561-1944

BY THE LABOR AND
COMMERCE COMMITTEE

1 IN THE HOUSE

2

HOUSE BILL NO. 352

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, and
11 predictable delivery of indemnity and medical benefits to injured workers
12 at a reasonable cost to the employers who are subject to the provisions of
13 AS 23.30.

* ADD
"FAIR"

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

* #1

20 board's decisions be conclusive if supported by any evidence.

21 (c) It is the intent of the legislature in amending AS 23.30.175

* #2

22 regarding benefits payable to recipients not residing in the state to

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

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

27 (3) remove obstacles to the utilization of vocational rehabili-
28 tation that may be brought about by the payment of workers' compensation
29 benefits at the high levels provided by the Alaska workers' compensation

1 law to individuals residing in localities with living costs lower than
2 those in Alaska.

3 * Sec. 2. AS 23.30.005(h) is amended to read:

4 (h) The department ^{SHALL} [may] adopt identical rules for all panels, and
5 procedures for the periodic selection, retention, and removal of
6 rehabilitation specialists or physicians under AS 23.30.041 and 23.-
7 30.095, and ^{SHALL} [may] adopt regulations to carry out the provisions of this
8 chapter. Process and procedure under this chapter shall be as summary
9 and simple as possible. The department, the board or a member of it
10 may for the purposes of this chapter subpoena witnesses, administer or
11 cause to be administered oaths, and may examine or cause to have
12 examined the parts of the books and records of the parties to a pro-
13 ceeding that relate [WHICH RELATED] to questions in dispute. The
14 superior court, on application of the department, the board or any
15 members of it, shall enforce the attendance and testimony of witnesses
16 and the production and examination of books, papers, and records.

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

18 (m) If a regulation adopted by the department and approved by a
19 majority of the full board is determined to be invalid by the state
20 supreme court, the department shall immediately adopt new regulations
21 that conform to the department's statutory authority as interpreted by
22 the court. *NEW SUBSECTION NOT ADDED*

23 * Sec. 4. AS 23.30.020 is amended by adding a new subsection to read:

24 (b) An employee who knowingly makes a false statement as to the
25 employee's physical condition on an employment application or preem-
26 ployment questionnaire may not receive benefits under this chapter if
27 (1) the employer relied upon the false representation and
28 this reliance was a substantial factor in the hiring; and
29 (2) there was a causal connection between the false

1 representation and the injury to the employee.

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

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

22	Column A	Column B	
23	Second Injury Fund	Reserve Rate	
24	Contribution Rate	At Least	But Less Than
25	(Percent)	(Percent)	(Percent)
26	6	0	50
27	5	50	75
28	4	75	100
29	3	100	125

1	2	125	150
2	1	150	175
3	0	175	

4 * Sec. 6. AS 23.30.041 is repealed and reenacted to read:

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

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

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

14 (2) recommend regulations for adoption by the board that
15 establish performance and reporting criteria for rehabilitation spe-
16 cialists;

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

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

22 (5) submit to the department, on or before January 1 of
23 each year, a report of reemployment benefits provided under this
24 section for the previous fiscal year; the report must include a gen-
25 eral section and sections related to each rehabilitation specialist
26 used under this section; the report must also include for each section
27 a statistical summary of all rehabilitation cases, including

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

1 (B) the estimated and actual time of each rehabilita-
2 tion plan;

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

6 (D) the cost of reemployment services;

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

9 (7) promote awareness among physicians, adjustors, injured
10 workers, employers, employees, attorneys, training providers, and
11 rehabilitation specialists of the reemployment program established in
12 this subsection.

13 (c) If an employee suffers a compensable injury that may perma-
14 nently preclude an employee's return to the employee's occupation at
15 the time of injury, the employee or employer may request an eligibil-
16 ity evaluation for reemployment benefits. The reemployment services
17 administrator shall, on a rotating basis, select a rehabilitation
18 specialist from the list maintained under (b)(6) of this section to
19 perform the eligibility evaluation.

20 (d) Except as provided in (e) of this section, an employee shall
21 be eligible for benefits under this section upon the employee's writ-
22 ten request and by having a physician predict that the employee will
23 have permanent physical capacities that are less than the physical
24 demands of the employee's job as described in the United States
25 Department of Labor's "Selected Characteristics of Occupations Defined
26 in the Dictionary of Occupational Titles" for

27 (1) the employee's job at the time of injury; and

28 (2) other jobs that exist in the labor market that the
29 employee has held within 10 years before the injury or that the

*THINGS CONSIDERED S/WAGE
BEEN WORKED*

1 employee has held following the injury, for a period long enough to
2 obtain the skills to compete in the labor market, according to specif-
3 ic vocational preparation codes as described in the dictionary of
4 occupational titles.

book

5 (e) An employee is not eligible for reemployment benefits if

6
6

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

12 (2) the employee has been previously rehabilitated in a
13 former workers' compensation claim and returned to work in the same or
14 similar occupation in terms of physical demands.

**
DESIGN
YES*

*DO THE EMPLOYEE WORK AT THE
TIME OF THE PLANS RECOVERY OR*

(3) P. 4

15 (f) When an employee is found eligible for reemployment benefits
16 and desires to use these benefits, the employee shall select a re-
17 habilitation specialist who shall provide a complete reemployment
18 services plan. If the employer disagrees with the employee's choice
19 of rehabilitation specialist to develop the plan and the disagreement
20 cannot be resolved, then the reemployment services administrator shall
21 assign a rehabilitation specialist. The employer and employee each
22 have one right of refusal of a rehabilitation specialist. The reem-
23 ployment plan must include the following:

- 23 (1) an occupational goal in the labor market;
- 24 (2) a plan to acquire the occupational skills to be employ-
25 able;
- 26 (3) the cost estimate of the reemployment plan, including
27 provider fees; the amount of tuition, books, tools, and supplies;
28 transportation; temporary lodging; or job modification devices;
- 29 (4) the estimated length of time that the plan will take;

1 (5) the date the plan will commence; and
2 (6) the time of medical stability as predicted by the
3 physician. *ESTIMATED*

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

- 7 (1) on the job training;
- 8 (2) vocational training;
- 9 (3) academic training;
- 10 (4) self-employment; or
- 11 (5) a combination of (1) - (4) of this subsection.

12 (h) The employee, rehabilitation specialist, and the employer
13 shall sign the reemployment services plan. *INSURANCE*

14 (i) After the injured worker has elected to participate in reem-
15 ployment benefits, noncooperation by the worker shall result in the
16 termination of reemployment benefits on the date of noncooperation.

17 Noncooperation means failure to — *INSURE REASONABLY*

- 18 (1) keep appointments;
- 19 (2) maintain average grades; *AN*
- 20 (3) attend designated programs;
- 21 (4) maintain contact with the rehabilitation specialist;
- 22 (5) cooperate with the rehabilitation specialist in devel-
23 oping a reemployment plan and participating in activities relating to
24 reemployability on a full-time basis;
- 25 (6) comply with the employee's responsibilities outlined in
26 the reemployment plan; or
- 27 (7) participate in any planned reemployment activity as
28 determined by the reemployment services administrator. *INSURANCE P. 7*

29 (j) Reemployment benefits are subject to the following time

7

? with no limit in REEMPLOYMENT

INSURANCE
REVIEW OR
RECOURSE SECTION

1 limits:

2 (1) benefits related to the reemployment plan may not
3 extend past two years from date of plan acceptance at which time the
4 benefits expire, except at the discretion of the employer;

5 (2) election of the eligibility evaluation by the employee
6 for reemployment benefits must occur within 60 days of the employer's
7 notice of injury unless the reemployment services administrator deter-
8 mines that unusual and extenuating physical limitations of the em-
9 ployee preclude the employee from making a timely request;

10 (3) the determination of the employee's eligibility for
11 reemployment benefits shall occur no later than 30 days following the
12 date of evaluation referral, except under circumstances that are
13 determined to be unusual and extenuating by the reemployment services
14 administrator, who may grant up to an additional 30 days;

15 (4) within 10 days after the employee has been determined
16 eligible for reemployment benefits, the employee and employer shall
17 select a rehabilitation specialist to deliver reemployment services;

18 (5) a reemployment plan must be formulated and approved by
19 the parties within 90 days of the determinatio. of eligibility;

20 (6) the reemployment plan shall be initiated when the
21 employee is considered physically able to engage in the plan by the
22 employee's physician;

23 (7) if the employer and employee fail to agree on a reem-
24 ployment plan, either party may submit a reemployment plan for ap-
25 proval to the reemployment services administrator; the reemployment
26 services administrator shall approve or deny a plan within 14 days
27 after the plan is submitted; within 10 days of the decision, either
28 party may seek review of the decision by requesting a hearing under
29 AS 23.30.110; the board shall uphold the decision of the administrator

8
TAKE
LOOK
AT THIS

STY
CLAY

9

1 unless evidence is submitted supporting an allegation of abuse of
2 discretion on the part of the administrator; the board shall render a

3 decision within 30 days after completion of the hearing.

4 (k) The cost of the reemployment plan incurred under this sec-
5 tion shall be the responsibility of the employer, but may not exceed
6 \$10,000. If an employee reaches medical stability before completion
7 of the plan, temporary total disability benefits shall cease and
8 permanent impairment benefits shall then be paid at the employee's
9 temporary total disability rate. If the employee's permanent impair-
10 ment benefits are exhausted before the completion or termination of
11 the reemployment plan, the employer shall provide wages equal to 60
12 percent of the employee's spendable weekly wages but not to exceed
13 \$525, until the completion or termination of the plan. A permanent
14 impairment benefit remaining unpaid upon the completion or termination
15 of the plan shall be paid to the employee in a single lump sum. The
16 fees of the rehabilitation specialist or rehabilitation professional
17 shall be paid by the employer and may not be included in determining
18 the cost of the reemployment plan.

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

10

25 (m) In this section
26 (1) "employability" means possessing the ability but not
27 necessarily the opportunity to engage in employment that is consistent
28 with the employee's physical status imposed by the compensable injury
29 or disease;

11

1

(2) "labor market"

means a geographical area that offers

2

employment opportunities in the following priority:

3

(A) area of residence;

4

(B) area of last employment;

5

(C) the state;

6

(D) other states; *'WHERE EMPLOYEE LIVES'*

7

(3) "physical capacities" means objective and measurable

8

physical traits such as ability to lift and carry, walk, stand or sit,

9

push, pull, climb, balance, stoop, kneel, crouch, crawl, reach,

10

handle, finger, feel, talk, hear or see;

11

(4) "physical demands" means the physical requirements of

12

the job such as strength, including positions such as standing, walk-

13

ing, sitting, and movement of objects such as lifting, carrying,

14

pushing, pulling, climbing, balancing, stooping, kneeling, crouching,

15

crawling, reaching, handling, fingering, feeling, talking, hearing, or

16

seeing;

17

(5) "reemployment benefits" means eligibility determina-

18

tion, plan development, and plan cost not exceeding \$10,000, exclusive

19

of provider fees;

12

20

(6) "rehabilitation specialist"

means a person who is a

21

certified insurance rehabilitation specialist^C or a person who has^{I R}

22

equivalent or better qualifications as determined under regulations

23

adopted by the department;

13

24

(7) "remunerative employability"

means having the skills

25

that allow a worker to be compensated with wages or other earnings

26

equivalent to at least 60 percent of the worker's gross hourly wages

27

at the time of injury; if the employment is outside the state, the

28

stated 60 percent shall be adjusted to account for the difference

29

between the applicable state average weekly wage and the Alaska

1 average weekly wage.

2 * Sec. 7. AS 23.30.055 is amended to read:

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

14
21 * Sec. 8. AS 23.30.095(a) is amended to read:

22 (a) The employer shall furnish medical, surgical, and other
23 attendance or treatment, nurse and hospital service, medicine,
24 crutches, and apparatus for the period which the nature of the injury
25 or the process of recovery requires, not exceeding two years from and
26 after the date of injury to the employee. However, if the condition
27 requiring the treatment, apparatus, or medicine is a latent one, the
28 two- year period runs from the time the employee has knowledge of the
29 nature of the employee's disability and its relationship to the

1 employment and after disablement. It shall be additionally provided
2 that, if continued treatment or care or both beyond the two-year
3 period is indicated, the injured employee has the right of review by
4 the board. The board may authorize continued treatment or care or
5 both as the process of recovery may require. When medical care is
6 required, the injured employee may designate a licensed physician
7 inside the state where the employee resides to render the care. The

8 employee may not make more than one change in the employee's choice of
9 attending physician without the written consent of the employer.

10 Referral to a specialist by the employee's attending physician is not
11 considered a change in physicians [EXCEPT IN CASES WHERE, IN THE
12 JUDGMENT OF THE BOARD, CARE OR TREATMENT OR BOTH CAN BEST BE ADMINIS-
13 TERED BY THE SELECTION OF ANOTHER PHYSICIAN]. Upon procuring the
14 services of a physician, the injured employee shall give proper noti-
15 fication of the selection to the employer within a reasonable time
16 after first being treated. Notice of a change in the attending physi-
17 cian shall be given before the change [IF FOR ANY REASON DURING THE
18 PERIOD WHEN MEDICAL CARE IS REQUIRED THE EMPLOYEE WISHES TO CHANGE TO
19 ANOTHER PHYSICIAN, THE EMPLOYEE MAY DO SO IN ACCORDANCE WITH REGU-
20 LATIONS ADOPTED BY THE BOARD].

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

22 (c) A claim for medical or surgical treatment is not valid and
23 enforceable against the employer unless, within 14 days following
24 treatment, the physician giving the treatment or the employee re-
25 ceiving it furnishes to the employer and the board notice of the
26 injury and treatment, preferably on a form prescribed by the board.
27 The board shall, however, excuse the failure to furnish notice within
28 14 days when it finds it to be in the interest of justice to do so,
29 and it may, upon application by a party in interest, make an award for

(15) X
1 in SPECIALTY
ALSO
X

16

CAN PLAN BE MODIFIED ALONG THE WAY ?
OK

1 the reasonable value of the medical or surgical treatment so obtained

2 by the employee. A claim for a course of treatment requiring con-

3 tinuing and multiple treatments of a similar nature is not valid

4 unless the treatments are carried out under a written treatment plan

5 prescribed before the commencement^{SUCH} of treatment, completed and signed

6 by the attending physician, and mailed to the employer within one week

7 of the beginning of treatment. The treatment plan must include objec-

8 tives, modalities, and frequency of treatment. The initial treatment

9 plan may not include more than 20 visits in the first 60 days. If

10 more than 20 visits are required within the first 60 days, or more

11 than four visits a month after the first 60 days, the physician shall

12 document the need for services in excess of the guidelines in the

13 written treatment plan.

* Sec. 10. AS 23.30.095(e) is amended to read:

(e) The employee shall, after an injury, at reasonable times during the continuance of the disability, if requested by the employer or when ordered by the board, submit to an examination by a physician or surgeon of the employer's choice [AUTHORIZED TO PRACTICE MEDICINE

UNDER THE LAWS OF THE STATE IN WHICH THE EMPLOYEE MAY BE FOUND], furnished and paid for by the employer. An examination requested by the employer not less than 14 days after injury, and every 30 days thereafter, shall be presumed to be reasonable, and the employee shall submit to the examination without further request or order by the board.

* Facts relative to the injury or claim communicated to or otherwise learned by a physician or surgeon who may have attended or examined the employee, or who may have been present at an examination are not privileged, either in the hearings provided for in this chapter or an action to recover damages against an employer who is subject to the compensation provisions of this chapter. If an employee

17

S/DOCTOR SHOPPING BY EMPLOYER'S INSURANCE CO. BE LIMITED TOO

* INSERT "WHEN MEDICALLY APPROPRIATE, THE IME PHYSICIAN SHOULD USE ALREADY EXISTING DIAGNOSTIC DATA TO MAKE HIS DETERMINATION."

○

18

1 refuses to submit to an [ANY] examination provided for in this sec-
 2 tion, the employee's rights to compensation shall be suspended until
 3 the obstruction or refusal ceases, and the employee's compensation
 4 during the period of suspension may, in the discretion of the board or
 5 the court determining an action brought for the recovery of damages
 6 under this chapter, be forfeited. The board in any case of death may
 7 require an autopsy at the expense of the party requesting the autopsy.
 8 An autopsy may not be held without notice first being given to the
 9 widow or widower or next of kin if they reside in the state or their
 10 whereabouts can be reasonably ascertained, of the time and place of
 11 the autopsy and reasonable time and opportunity given the widow or
 12 widower or next of kin to have a representative present to witness the
 13 autopsy. If adequate notice is not given, the findings from the
 14 autopsy may be suppressed on motion made to the board or to the supe-
 15 rior court, as the case may be.

16 * Sec. 11. AS 23.30.095(f) is amended to read:

17 (f) All fees and other charges for medical treatment or service
 18 [ARE LIMITED TO THE CHARGES THAT PREVAIL IN THE SAME COMMUNITY FOR
 19 SIMILAR TREATMENT OF INJURED PERSONS OF LIKE STANDARD OF LIVING AND]
 20 shall be subject to regulation by the board but may not exceed usual,

19

21 customary, and reasonable fees for the treatment or service in the
 22 community in which it is rendered, as determined by the board.

23.30.030
 MAKES THIS
 REDUNDANT

23 * Sec. 12. AS 23.30.095(j) is repealed and reenacted to read:

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

" IN NO EVENT SHALL
 THE INJURED WORKER BE
 RESPONSIBLE FOR ANY FEES
 IN EXCESS OF
 THOSE DETER-
 MINED BY
 THE BOARD."

20

29 * Sec. 13. AS 23.30.095 is amended by adding a new subsection to read:

* INSERT " THE ABILITY TO ENTER A RE-EMPLOYMENT SERVICES PLAN, "

1 (k) In the event of a medical dispute regarding determinations
2 of causation, medical stability, degree of impairment, functional
3 capacity, the amount and efficacy of the continuance of or necessity
4 of treatment,* or compensability between the employee's attending
5 physician and the employer's independent medical evaluation, a second
6 independent medical evaluation shall be conducted by a physician or
7 physicians selected by the board from a list established and main-
8 tained by the board. The cost of the examination and medical report
9 shall be paid by the employer. The report of the independent medical
10 examiner shall be furnished to the board and to the parties within 14
11 days after the examination is concluded. The opinion of the indepen-
12 dent medical examiner shall, in the absence of clear and convincing
13 objective evidence to the contrary, be presumed to be correct. A
14 person may not seek damages from an independent medical examiner
15 caused by the rendering of an opinion or providing testimony under
16 this subsection, except in the event of fraud. ^{INSERT "OR GROSS NEGLIGENCE"}

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

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

1 in the case of latent defects pertinent to and causing compensable
2 disability, the injured employee has full right to claim as shall be
3 determined by the board, time limitations notwithstanding.

4 * Sec. 15. AS 23.30.120 is amended by adding a new subsection to read:

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

8 * Sec. 16. AS 23.30.125 is amended by adding a new subsection to read:

9 (f) Subject to an employer's or employee's burden of proof, a
10 finding of fact made by the board as a part of a compensation order is
11 conclusive if supported by any evidence.

12 * Sec. 17. AS 23.30.130(a) is amended to read:

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

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

26 (c) The employer shall notify the board and the employee on a
27 form prescribed by the board that the payment of compensation has
28 begun or has been increased, decreased, suspended, terminated, re-
29 sumed, or changed in type. An initial report shall be filed with the

1 board and sent to the employee within 28 days after the date of issu-
2 ing the first payment of compensation. If at any time 21 days or more
3 pass and no compensation payment is issued, a report notifying the
4 board and the employee of the termination or suspension of compen-
5 sation shall be filed with the board and sent to the employee within
6 28 days after the date the last compensation payment was issued. A
7 report shall also be filed with the board and sent to the employee
8 within 28 days after the date of issuing a payment increasing, de-
9 creasing, resuming, or changing the type of compensation paid. If the
10 [employer fails to notify the] board and the employee within the 28 days
11 prescribed by this subsection for reporting, the [employer] shall pay a
12 civil penalty of \$100 for the first day plus \$10 for each day there-
13 after that the [employer failed to give] notice. Total penalties under
14 this subsection [SECTION] may not exceed \$1,000 for a failure to file
15 a required report. Penalties assessed under this subsection are
16 eligible for reduction under (m) of this section.

17 * Sec. 19. AS 23.30.155(d) is amended to read:

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

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

6 * Sec. 20. AS 23.30.155(m) is repealed and reenacted to read:

7 (m) ⁽¹⁾ By March 1 of each year the ^{COMMISSIONER OF LABOR & INDUSTRY ADMINISTRATION} employer shall file a verified
8 annual report on a form prescribed by the board stating the total
9 amount of all compensation by type, medical, and related benefits,
10 vocational rehabilitation expenses, legal fees, and penalties paid on
11 all claims during the preceding calendar year. ⁽²⁾ If the annual report
12 is timely and complete when received by the board and provides accu-
13 rate information about each category of payments, the commissioner
14 shall review the timeliness of the employer's reports filed under (c)
15 of this section. If the ^{COMMISSIONER OF LABOR & INDUSTRY ADMINISTRATION} employer filed at least 99 percent of the
16 reports ^{FOR THE PRECEDING YEAR} on time, the penalties assessed under (c) of this section
17 shall be waived. If the employer filed at least 97 percent of the
18 reports on time, 75 percent of the penalties assessed under (c) of
19 this section shall be waived. If the employer filed 95 percent of the
20 reports on time, 50 percent of the penalties assessed under (c) of
21 this section shall be waived. If the employer's reports have not been
22 filed on time at least 95 percent of the time, none of the penalties
23 assessed under (c) of this section shall be waived. The penalties
24 that are not waived are due and payable ^{WITHIN 28 DAYS AFTER THE} when the employer receives ^{COMMISSIONER OF}
25 notification from the commissio ^{LABOR & INDUSTRY ADMINISTRATION} r regarding the timeliness of the
26 reports. ^{(3) ISSUED ON} ^{(4) 7/10}

27 * Sec. 21. AS 23.30.175 is repealed and reenacted to read:

28 Sec. 23.30.175. RATES OF COMPENSATION. (a) The weekly rate of
29 compensation for disability or death [for a recipient residing in the

* INSERT "IF THE EMPLOYER CAN VERIFY THAT THE EMPLOYEE'S SPENDABLE WEEKLY WAGE IS LESS THAN \$154, THE EMPLOYER CAN PAY THE LESSER AMOUNT WITHOUT BOARD ORDER."

1 state] may not exceed \$700 and initially may not be less than \$110.
2 However, if the board determines that the employee's spendable weekly
3 wages are less than \$110 a week as computed under AS 23.30.220, or
4 less than \$154 a week in the case of an employee who has furnished
5 documentary proof of the employee's wages, it shall issue an order
6 adjusting the weekly rate of compensation to a rate equal to the
7 employee's spendable weekly wages.* If the employee's spendable weekly
8 wages are greater than \$154, but 80 percent of the employee's spend-
9 able weekly wages is less than \$154, the employee's weekly rate of
10 compensation shall be \$154. Prior payments made in excess of the
11 adjusted rate shall be deducted from the unpaid compensation in the
12 manner the board determines. In any case, the employer shall pay
13 timely compensation.

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

17 (1) the weekly rate of compensation shall be calculated by
18 multiplying the recipient's weekly compensation rate calculated under
19 AS 23.30.180, 23.30.185, 23.30.190, 23.30.200, or 23.30.215, by the
20 ratio of the cost of living^{INDEX} of the [locality]^{STATE} in which the recipient
21 resides to the cost of living^{INDEX} of the [state]^{ALASKA}

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

25 (3) if the [^{GROSS}average] weekly [^{EARNINGS}wage] of the recipient and the
26 resulting compensation rate is determined under AS 23.30.220(a)(2),
27 the calculation required by this subsection applies only to the por-
28 tion of the recipient's weekly compensation rate attributable to wages
29 earned in the state;

LIVING IN
COST OF LIVING AREAS
VS. IN STATES
US

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

4 (c) The board shall provide by regulation for the determination
5 of living costs for ^{ALASKA} [the state] and other ^{STATES} [localities] in which recipients
6 reside and for the annual redetermination of these costs.

7 * Sec. 22. AS 23.30.180 is amended to read:

8 Sec. 23.30.180. PERMANENT TOTAL DISABILITY. In case of total
9 disability adjudged to be permanent 80 percent of the injured em-
10 ployee's spendable weekly wages shall be paid to the employee during
11 the continuance of the total disability. Loss of both hands, or both
12 arms, or both feet, or both legs, or both eyes, or of any two of them,
13 in the absence of conclusive proof to the contrary, constitutes perma-
14 nent total disability. In all other cases permanent total disability
15 is determined in accordance with the facts. In making this determina-

26

16 tion the market for the employee's services shall be
17 (1) area of residence;
18 (2) area of last employment; and
19 (3) the state* OF ALASKA OR THE STATE OF RESIDENCE.

20 * Sec. 23. AS 23.30.180 is mended by adding a new subsection to read:

27

21 (b) Failure to achieve remunerative employability as defined in
22 AS 23.30.041(m)(7) does not, by itself, constitute permanent total
23 disability.

24 * Sec. 24. AS 23.30.185 is amended to read:

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

28

1
2
3

occurring after the date of medical stability. Temporary total disability benefits may not be paid for more than two years regardless of continuance of the disability.

29

4
5

* Sec. 25. AS 23.30.190 is repealed and reenacted to read:

Sec. 23.30.190. COMPENSATION FOR PERMANENT PARTIAL IMPAIRMENT.

6
7
8
9
10
11
12
13
14

(a) In case of impairment partial in character but permanent in quality, and not resulting in permanent total disability, the compensation is \$240,000 multiplied by the employee's percentage of net permanent impairment of the whole person, and payable in a single lump sum, except as otherwise provided in AS 23.30.041, but the compensation may not be discounted for any present value considerations. Net permanent impairment is to be determined by multiplying the employee's actual degree of permanent impairment by the appropriate adjustment factor, as follows:

Degree of Actual Impairment	Adjustment Factor
0 - 5 percent	0
6 - 10 percent	0.2
11 - 15 percent	0.4
16 - 20 percent	0.6
21 - 25 percent	0.7
26 - 30 percent	0.8
31 percent and greater	1.0

23
24
25
26
27
28
29

(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 may adopt and use a supplemental ^{RECOGNIZED} schedule only for injuries that cannot be rated by the use of American Medical Association guidelines.]

* "IF AN INJURY CANNOT BE RATED BY USE OF THE AMERICAN MEDICAL ASSOCIATION GUIDES, THE MANUAL FOR ORTHOPEDIC SURGEONS MAY BE USED."

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

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

10 * Sec. 26. AS 23.30.200 is amended to read:

11 Sec. 23.30.200. TEMPORARY PARTIAL DISABILITY. In case of tempo-
12 rary partial disability resulting in decrease of earning capacity the
13 compensation shall be 80 percent of the difference between the injured
14 employee's spendable week'y wages before the injury and the wage-
15 earning capacity of the employee after the injury in the same or
16 another employment, to be paid during the continuance of the disabili-
17 ty, but not to be paid for more than two [FIVE] years. Temporary
18 partial disability benefits may not be paid for a period of disability
19 occurring after the date of medical stability, unless otherwise pro-
20 vided under AS 23.30.041.

21 * Sec. 27. AS 23.30.200 is amended by adding a new subsection to read:

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

1 disabled condition, including the effect of disability as it may
2 naturally extend into the future.

3 * Sec. 28. AS 23.30.220(a) is amended to read:

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

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

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

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

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

32

TAKE
MAY 12 1966
SUBMIT
17768

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

7 * Sec. 29. AS 23.30.225 is amended by adding a new subsection to read:

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

18 * Sec. 30. AS 23.30 is amended by adding a new section to read:

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

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

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

8 * Sec. 31. AS 23.30.265(15) is amended to read:

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

25 * Sec. 32. AS 23.30.265(17) is amended to read:

26 (17) "injury" means accidental injury or death arising out
27 of and in the course of employment, and an occupational disease or
28 infection which arises naturally out of the employment or which natu-
29 rally or unavoidably results from an accidental injury; "injury" [,

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

15 * Sec. 33. AS 23.30.265 is amended by adding a new paragraph to read:

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

25 * Sec. 34. AS 23.30.210 is repealed.

26 * Sec. 35. TRANSITIONAL PROVISIONS. Notwithstanding AS 23.30.040(b),
27 as amended by sec. 5 of this Act, and AS 23.30.155(m), as amended by sec.
28 20 of this Act, on or before March 1, 1989, each employer that is subject
29 to those sections shall file a report and make the appropriate contribution

34

X
34
DISCIPLINARY
LEAVE
TAKEN
GOOD FAITH
OF
EMPLOYER

35

1 for all claims existing as of December 31, 1988. The period covered in the
2 report shall be from the date of the termination report or the last an-
3 niversary report filed, if one has been filed, through December 31, 1988.

4 * Sec. 36. APPLICABILITY.* This Act applies only to injuries sustained
5 on or after July 1, 1988.

6 * Sec. 37. This Act takes effect July 1, 1988.

* INSERT " EXCEPT FOR SECTIONS 5, 18, 20 AND 21, "

5-1514B
Ford
2/22/88

Original sponsor: Labor and Commerce
Committee

1 IN THE SENATE

BY THE LABOR AND
COMMERCE COMMITTEE

2 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 * Sec. 2. AS 23.30.005(h) is amended to read:

5 (h) The department shall [MAY] adopt [IDENTICAL] rules for all
6 panels, and procedures for the periodic selection, retention, and re-
7 moval of rehabilitation specialists or physicians under AS 23.30.041
8 and 23.30.095, and shall [MAY] adopt regulations to carry out the
9 provisions of this chapter. Process and procedure under this chapter
10 shall be as summary and simple as possible. The department, the board
11 or a member of it may for the purposes of this chapter subpoena wit-
12 nesses, administer or cause to be administered oaths, and may examine
13 or cause to have examined the parts of the books and records of the
14 parties to a proceeding that relate [WHICH RELATED] to questions in
15 dispute. The superior court, on application of the department, the
16 board or any members of it, shall enforce the attendance and testimony
17 of witnesses and the production and examination of books, papers, and
18 records.

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

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

24 * Sec. 4. AS 23.30.020 is amended by adding a new subsection to read:

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

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

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

3 * Sec. 5. AS 23.30.025 is amended by adding a new subsection to read:

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

8 * Sec. 6. AS 23.30.030 is amended by adding a new paragraph to read:

9 (8) The premium paid for the insurance may be paid semi-
10 annually, if requested by the insured. The insurer shall include this
11 provision in the insurance policy in a manner that clearly informs the
12 insured of the provision.

13 * Sec. 7. AS 23.30.040(b) is amended to read:

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

determine and make available to the public the applicable contribution rate for the following calendar year according to the reserve rate of the second injury fund in column B of this subsection:

Column A	Column B	
Second Injury Fund	Reserve Rate	
Contribution Rate	At Least	But Less Than
(Percent)	(Percent)	(Percent)
6	0	50
5	50	75
4	75	100
3	100	125
2	125	150
1	150	175
0	175	

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

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

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

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

(b) The administrator shall perform the following functions:

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

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

1 specialists;

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

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

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

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

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

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

20 (D) the cost of reemployment benefits;

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

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

27 (c) If an employee suffers a compensable injury that may perma-
28 nently preclude an employee's return to the employee's occupation at
29 the time of injury, the employee or employer may request an

1 eligibility evaluation for reemployment benefits. The employee shall
2 request an eligibility evaluation within 90 days after the employee
3 gives the employer notice of injury unless the administrator deter-
4 mines the employee has unusual and extenuating physical limitations
5 that prevent the employee from making a timely request. The adminis-
6 trator shall, on a rotating and geographic basis, select a rehabilita-
7 tion specialist from the list maintained under (b)(6) of this section
8 to perform the eligibility evaluation.

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

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

- 28 (1) the employee's job at the time of injury; and
- 29 (2) other jobs that exist in the labor market that the

1 employee has held or received training for within 10 years before the
 2 injury or that the employee has held following the injury for a period
 3 long enough to obtain the skills to compete in the labor market,
 4 according to specific vocational preparation codes as described in the
 5 dictionary of occupational titles.

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

7 (1) the employer offers employment within the employee's
 8 predicted post-injury physical capacities at a wage equivalent to at
 9 least the state minimum wage under AS 23.10.065 or 60 percent of the
 10 worker's gross hourly wages at the time of injury, whichever is great-
 11 er, of injury and the employment prepares the employee to be employ-
 12 able in other jobs that exist in the labor market;

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

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

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

29 (h) Within 90 days after the rehabilitation specialist's

1 selection under (g) of this section, the reemployment plan must be
2 formulated and approved. The reemployment plan must include at least
3 the following:

4 (1) a determination of the occupational goal in the labor
5 market;

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

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

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

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

15 (6) the date the plan will commence;

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

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

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

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

26 (1) on the job training;

27 (2) vocational training;

28 (3) academic training;

29 (4) self-employment; or