

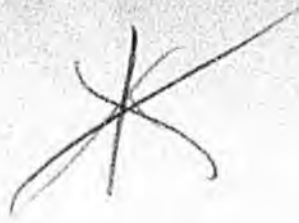
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1 * Sec. 10. AS 23.30.075(b) is amended to read:

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

17 * Sec. 11. AS 23.30.095(a) is amended to read:

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



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both as the process of recovery may require. When medical care is required, the injured employee may designate a licensed physician inside the state where the employee resides to render the care. The employee may not make more than one change in the employee's choice of attending physician without the written consent of the employer. Referral to a specialist by the employee's attending physician is not considered a change in physicians [EXCEPT IN CASES WHERE, IN THE JUDGMENT OF THE BOARD, CARE OR TREATMENT OR BOTH CAN BEST BE ADMINISTERED BY THE SELECTION OF ANOTHER PHYSICIAN]. Upon procuring the services of a physician, the injured employee shall give proper notification of the selection to the employer within a reasonable time after first being treated. Notice of a change in the attending physician shall be given before the change [IF FOR ANY REASON DURING THE PERIOD WHEN MEDICAL CARE IS REQUIRED THE EMPLOYEE WISHES TO CHANGE TO ANOTHER PHYSICIAN, THE EMPLOYEE MAY DO SO IN ACCORDANCE WITH REGULATIONS ADOPTED BY THE BOARD].

* Sec. 12. AS 23.30.095(c) is amended to read:

(c) A claim for medical or surgical treatment is not valid and enforceable against the employer unless, within 14 days following treatment, the physician giving the treatment or the employee receiving it furnishes to the employer and the board notice of the injury and treatment, preferably on a form prescribed by the board. The board shall, however, excuse the failure to furnish notice within 14 days when it finds it to be in the interest of justice to do so, and it may, upon application by a party in interest, make an award for the reasonable value of the medical or surgical treatment so obtained by the employee. A claim for a course of treatment requiring continuing and multiple treatments of a similar nature is not valid unless the treatments are carried out under a written treatment plan

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1 prescribed before the commencement of the course of treatment, com-
2 pleted and signed by the attending physician, and mailed to the em-
3 ployer within one week of the beginning of treatment. The treatment
4 plan must include objectives, modalities, and frequency of treatment.
5 The initial treatment plan may not include more than 20 visits in the
6 first 60 days. If more than 20 visits are required within the first
7 60 days, or more than four visits a month after the first 60 days, the
8 physician shall document the need for services in excess of the guide-
9 lines in the written treatment plan.

10 * Sec. 13. AS 23.30.095(e) is amended to read:

11 (e) The employee shall, after an injury, at reasonable times
12 during the continuance of the disability, if requested by the employer
13 or when ordered by the board, submit to an examination by a physician
14 or surgeon of the employer's choice [AUTHORIZED TO PRACTICE MEDICINE
15 UNDER THE LAWS OF THE STATE IN WHICH THE EMPLOYEE MAY BE FOUND],
16 furnished and paid for by the employer. The employer may not make
17 more than one change in the employer's choice of a physician or sur-
18 geon without the written consent of the employee. Referral to a
19 specialist by the employer's physician is not considered a change in
20 physicians. An examination requested by the employer not less than 14
21 days after injury, and every 60 days thereafter, shall be presumed to
22 be reasonable, and the employee shall submit to the examination with-
23 out further request or order by the board. Unless medically appropri-
24 ate, the physician shall use existing diagnostic data to complete the
25 examination. Facts relative to the injury or claim communicated to or
26 otherwise learned by a physician or surgeon who may have attended or
27 examined the employee, or who may have been present at an examination
28 are not privileged, either in the hearings provided for in this chap-
29 ter or an action to recover damages against an employer who is subject

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

17 * Sec. 14. AS 23.30.095(f) is amended to read:

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

26 * Sec. 15. AS 23.30.095(j) is repealed and reenacted to read:

27 *OL* (j) The board may appoint a medical services review committee,
28 or contract with an existing organization in the state or another
29 state, to assist and advise the board in matters involving the

1 appropriateness, necessity, and cost of medical and related services
2 provided under this chapter.

3 * Sec. 16. AS 23.30.095 is amended by adding a new subsection to read:

4 (k) In the event of a medical dispute regarding determinations
5 of causation, medical stability, ability to enter a reemployment plan,
6 degree of impairment, functional capacity, the amount and efficacy of
7 the continuance of or necessity of treatment, or compensability be-
8 tween the employee's attending physician and the employer's indepen-
9 dent medical evaluation, a second independent medical evaluation shall
10 be conducted by a physician or physicians selected by the board from a
11 list established and maintained by the board. The cost of the exami-
12 nation and medical report shall be paid by the employer. The report
13 of the independent medical examiner shall be furnished to the board
14 and to the parties within 14 days after the examination is concluded.

15 A person may not seek damages from an independent medical examiner
16 caused by the rendering of an opinion or providing testimony under
17 this subsection, except in the event of fraud or gross incompetence.

18 * Sec. 17. AS 23.30.105(a) is amended to read:

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

1 23.30.190, 23.30.200, or 23.30.215. It is additionally provided that,
2 in the case of latent defects pertinent to and causing compensable
3 disability, the injured employee has full right to claim as shall be
4 determined by the board, time limitations notwithstanding.

5 * Sec. 18. AS 23.30.110(c) is repealed and reenacted to read:

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

1 * Sec. 19. AS 23.30.120 is amended by adding a new subsection to read:

2 *OK* (c) The presumption of compensability established in (a) of this
3 section does not apply to a mental injury resulting from work-related
4 stress.

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

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

10 * Sec. 21. AS 23.30.130(a) is amended to read:

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

23 * Sec. 22. AS 23.30.155(c) is amended to read:

24 *OK* (c) The insurer or adjuster [EMPLOYER] shall notify the board
25 and the employee on a form prescribed by the board that the payment of
26 compensation has begun or has been increased, decreased, suspended,
27 terminated, resumed, or changed in type. An initial report shall be
28 filed with the board and sent to the employee within 28 days after the
29 date of issuing the first payment of compensation. If at any time 21

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

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

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

1 a portion of the benefits, the most recent employer or insurer who is
2 party to the claim and who may be liable shall make the payments
3 during the pendency of the dispute. When a final determination of
4 liability is made, any reimbursement required, including interest at
5 the statutory rate, and all costs and attorneys' fees incurred by the
6 prevailing employer, shall be made within 14 days of the determina-
7 tion.

8 * Sec. 24. AS 23.30.155(f) is amended to read:

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

16 * Sec. 25. AS 23.30.155(m) is repealed and reenacted to read:

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

1 the penalties assessed under (c) of this section shall be waived. If
 2 during the preceding year the insurer or adjuster filed at least 97
 3 percent of the reports on time, 75 percent of the penalties assessed
 4 under (c) of this section shall be waived. If during the preceding
 5 year the insurer or adjuster filed 95 percent of the reports on time,
 6 50 percent of the penalties assessed under (c) of this section shall
 7 be waived. If during the preceding year the insurer's or adjuster's
 8 reports have not been filed on time at least 95 percent of the time,
 9 none of the penalties assessed under (c) of this section shall be
 10 waived. The penalties that are not waived are due and payable when
 11 the insurer or adjuster receives notification from the commissioner
 12 regarding the timeliness of the reports. If the annual report is not
 13 filed by March 1 of each year, the insurer or adjuster shall pay a
 14 civil penalty of \$100 for the first day the annual report is late, and
 15 \$10 for each additional day the report is late. P 23 L 12-14 (JLT)

16 * Sec. 26. AS 23.30.155 is amended by adding new subsections to read:

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

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

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

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

29 Sec. 23.30.175. RATES OF COMPENSATION. (a) The weekly rate of

1 compensation for disability or death may not exceed \$700 and initially
2 may not be less than \$110. However, if the board determines that the
3 employee's spendable weekly wages are less than \$110 a week as com-
4 puted under AS 23.30.220, or less than \$154 a week in the case of an
5 employee who has furnished documentary proof of the employee's wages,
6 it shall issue an order adjusting the weekly rate of compensation to a
7 rate equal to the employee's spendable weekly wages. If the employer
8 can verify that the employee's spendable weekly wages are less than
9 \$154, the employer may adjust the weekly rate of compensation to a
10 rate equal to the employee's spendable weekly wages without an order
11 of the board. If the employee's spendable weekly wages are greater
12 than \$154, but 80 percent of the employee's spendable weekly wages is
13 less than \$154, the employee's weekly rate of compensation shall be
14 \$154. Prior payments made in excess of the adjusted rate shall be
15 deducted from the unpaid compensation in the manner the board deter-
16 mines. In any case, the employer shall pay timely compensation.

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

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

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

28 (3) if the gross weekly earnings of the recipient and the
29 resulting compensation rate is determined under AS 23.30.220(a)(2),

1 the calculation required by this subsection applies only to the por-
2 tion of the recipient's weekly compensation rate attributable to wages
3 earned in the state;

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

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

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

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

25 (1) area of residence;

26 (2) area of last employment;

27 (3) the state of residence; and

28 (4) the State of Alaska.

29 * Sec. 29. AS 23.30.180 is amended by adding a new subsection to read:

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

4 * Sec. 30. AS 23.30.185 is amended to read:

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

11 * Sec. 31. AS 23.30.190 is repealed and reenacted to read:

12 Sec. 23.30.190. COMPENSATION FOR PERMANENT PARTIAL IMPAIRMENT.

13 (a) In case of impairment partial in character but permanent in
 14 quality, and not resulting in permanent total disability, the compen-
 15 sation is \$135,000 multiplied by the employee's percentage of net
 16 permanent impairment of the whole person, and payable in a single lump
 17 sum, except as otherwise provided in AS 23.30.041, but the compensa-
 18 tion may not be discounted for any present value considerations.

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

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

29 (d) The impairment rating determined under (a) of this section

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

6 * Sec. 32. AS 23.30.200 is amended to read:

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

16 * Sec. 33. AS 23.30.200 is amended by adding a new subsection to read:

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

27 * Sec. 34. AS 23.30.220(a) is amended to read:

28 (a) The spendable weekly wage of an injured employee at the time
29 of an injury is the basis for computing compensation. It is the

1 employee's gross weekly earnings minus payroll tax deductions. The
2 gross weekly earnings shall be calculated as follows:

3 (1) The gross weekly earnings are computed by dividing by
4 100 the gross earnings of the employee in the two calendar years
5 immediately preceding the injury.

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

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

21 (4) If the employee is injured while performing duties as a
22 volunteer ambulance attendant, policeman, or fireman, the gross weekly
23 earnings for calculating compensation shall be the minimum gross
24 weekly earnings paid a full-time ambulance attendant, policeman, or
25 fireman employed in the political subdivision where the injury oc-
26 curred, or, if the political subdivision has no full-time ambulance
27 attendants, policemen, or firemen, at a reasonable figure previously
28 set by the political subdivision to make this determination but in no
29 case may the gross weekly earnings for calculating compensation be

1 less than the minimum wage computed on the basis of 40 hours work per
2 week.

3 * Sec. 35. AS 23.30.225 is amended by adding a new subsection to read:

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

14 * Sec. 36. AS 23.30 is amended by adding a new section to read:

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

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

26 (c) This section may not be construed to prohibit an employer
27 from requiring a prospective employee to fill out a preemployment
28 questionnaire or application regarding the person's prior health or
29 disability history as long as it is meant to either document written

1 notice for second injury fund reimbursement under AS 23.30.205(c) or
2 to determine whether the employee has the physical or mental capacity
3 to meet the documented physical or mental demands of the work.

4 * Sec. 37. AS 23.30.265(15) is amended to read:

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

21 * Sec. 38. AS 23.30.265(17) is amended to read:

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

1 "injury" does not include mental injury caused by mental stress unless
2 it is established that (A) the work stress was extraordinary and
3 unusual in comparison to pressures and tensions experienced by indi-
4 viduals in a comparable work environment, and (B) the work stress was
5 the predominant cause of the mental injury; the amount of work stress
6 shall be measured by actual events rather than misperceptions by the
7 employee; a mental injury is not considered to arise out of and in
8 the course of employment if it results from a disciplinary action,
9 work evaluation, job transfer, layoff, demotion, termination or simi-
10 lar action, taken in good faith by the employer;

11 * Sec. 39. AS 23.30.265 is amended by adding a new paragraph to read:

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

21 * Sec. 40. AS 23.30.210 and 23.30.265(28) are repealed.

22 *OK* * Sec. 41. TRANSITIONAL PROVISIONS. Notwithstanding AS 23.30.040(b),
23 as amended by sec. 6 of this Act, and AS 23.30.155(m), as amended by
24 sec. 25 of this Act, on or before March 1, 1989, each employer that is
25 subject to those sections shall file a report and make the appropriate
26 contribution for all claims existing as of December 31, 1988. The period
27 covered in the report shall be from the date of the termination report or
28 the last anniversary report filed, if one has been filed, through Decem-
29 ber 31, 1988.

1 *NAV* * Sec. 42. TEMPORARY RATE LIMITATION. Notwithstanding AS 21.39.030, an
 2 insurer providing workers' compensation insurance in the state may not
 3 increase the premium rate charged within the state for workers' compen-
 4 sation insurance during the period beginning July 1, 1988, and ending
 5 January 1, 1990.

6 *AL* * Sec. 43. TRANSITIONAL PROVISION. Notwithstanding AS 23.30.041(p), as
 7 enacted by sec. 8 of this Act, for the period from July 1, 1988, until
 8 June 30, 1989, the term "rehabilitation specialist" as used in AS 23.30.041
 9 includes a person who was actively employed for at least one year before
 10 June 30, 1988, in providing rehabilitation services to an injured worker
 11 receiving benefits under AS 23.30.

12 * Sec. 44. APPLICABILITY. Except for secs. 6, 23, 25, 26, 38, and 42
 13 of this Act, this Act applies only to injuries sustained on or after Ju-
 14 ly 1, 1988.

15 * Sec. 45. Section 38 of this Act applies to injuries sustained on or
 16 after the effective date of sec. 38 of this Act.

17 * Sec. 46. Section 42 of this Act is retroactive to April 25, 1988.

18 * Sec. 47. Sections 38 and 45 of this Act take effect immediately under
 19 AS 01.10.070(c).

20 * Sec. 48. Sections 1 - 37, and 39 - 44 of this Act take effect July 1,
 21 1988.

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Original sponsor: Labor and Commerce
Committee

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

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

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

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

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

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

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

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

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

27 (2) increase the incentives to return to work; and

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

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

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

7 (e) It is the intent of the legislature in amending AS 23.30.075(b)
8 and 23.30.155 that the division of workers' compensation, division of
9 insurance, and Department of Law strictly enforce the punishment authorized
10 under AS 23.30.075(b) and the reporting requirements and penalties for
11 noncompliance under AS 23.30.155. Strict enforcement is necessary because

12 (1) the state has failed to impose the punishment authorized
13 under AS 23.30.075(b) against those employers who fail to obtain workers'
14 compensation insurance or to qualify as a self-insurer; and

15 (2) there is a lack of specific data from the division of work-
16 ers' compensation and division of insurance to adequately assess the effi-
17 ciency and costs of the workers' compensation system.

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

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

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

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

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

29 (h) The department shall [MAY] adopt [IDENTICAL] rules for all

1 panels, and procedures for the periodic selection, retention, and re-
2 moval of both rehabilitation specialists and physicians under AS 23.-
3 30.041 and 23.30.095, and shall [MAY] adopt regulations to carry out
4 the provisions of this chapter. Process and procedure under this
5 chapter shall be as summary and simple as possible. The department,
6 the board or a member of it may for the purposes of this chapter
7 subpoena witnesses, administer or cause to be administered oaths, and
8 may examine or cause to have examined the parts of the books and
9 records of the parties to a proceeding that relate [WHICH RELATED] to
10 questions in dispute. The superior court, on application of the
11 department, the board or any members of it, shall enforce the atten-
12 dance and testimony of witnesses and the production and examination of
13 books, papers, and records.

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

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

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

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

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

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

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

28 (8) An annual insurance premium that exceeds \$2,000 may be
29 paid on an installment basis of not fewer than two payments, if

1 requested by the insured. Premiums paid by installment must be struc-
2 tured to reflect seasonal peaks in the basis of the premium. The
3 insurer shall include this provision in the insurance policy in a
4 manner that clearly informs the insured of the provision.

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

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

Column A	Column B	
Second Injury Fund	Reserve Rate	
Contribution Rate	At Least	But Less Than
(Percent)	(Percent)	(Percent)
6	0	50

1	5	50	75
2	4	75	100
3	3	100	125
4	2	125	150
5	1	150	175
6	0	175	

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

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

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

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

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

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

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

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

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

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

1 section for the previous fiscal year; the report must include a gener-
2 al section, sections related to each rehabilitation specialist em-
3 ployed under this section, and a statistical summary of all reha-
4 bilitation cases, including

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

7 (B) the estimated and actual time of each rehabilita-
8 tion plan;

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

12 (D) the cost of reemployment benefits;

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

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

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

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

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

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

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

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

29 (1) the employer offers employment within the employee's

1 predicted post-injury physical capacities at a wage equivalent to at
2 least the state minimum wage under AS 23.10.065 or 75 percent of the
3 worker's gross hourly wages at the time of injury, whichever is great-
4 er, and the employment prepares the employee to be employable in other
5 jobs that exist in the labor market;

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

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

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

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

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

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

condition and family support;

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

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

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

8 (6) the date the plan will commence;

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

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

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

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

19 (1) on the job training;

20 (2) vocational training;

21 (3) academic training;

22 (4) self-employment; or

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

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

1 review of the decision by requesting a hearing under AS 23.30.110; the
2 board shall uphold the decision of the administrator unless evidence
3 is submitted supporting an allegation of abuse of discretion on the
4 part of the administrator; the board shall render a decision within 30
5 days after completion of the hearing.

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

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

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

and location.

1
2 (n) After the employee has elected to participate in reemploy-
3 ment benefits, if the employer believes the employee has not coop-
4 erated the employer may terminate reemployment benefits on the date of
5 noncooperation. Noncooperation means unreasonable failure to

6 (1) keep appointments;

7 (2) maintain passing grades;

8 (3) attend designated programs;

9 (4) maintain contact with the rehabilitation specialist;

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

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

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

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

28 (p) In this section

29 (1) "administrator" means the reemployment benefits

1 administrator under AS 23.30.041(a);

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

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

- 7 (A) area of residence;
8 (B) area of last employment;
9 (C) the state;
10 (D) other states;

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

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

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

25 (7) "remunerative employability" means having the skills
26 that allow a worker to be compensated with wages or other earnings
27 equivalent to at least 60 percent of the worker's gross hourly wages
28 at the time of injury; if the employment is outside the state, the
29 stated 60 percent shall be adjusted to account for the difference

1 between the applicable state average weekly wage and the Alaska aver-
2 age weekly wage.

3 * Sec. 10. AS 23.30.055 is amended to read:

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

22 * Sec. 11. AS 23.30.075(b) is amended to read:

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

1 [SAID] corporation or apply for a certificate of self-insurance, and
2 the person actively in charge of the business of the [SUCH] corpo-
3 ration shall be subject to the penalties prescribed in this subsection
4 [HEREIN] and shall be personally, jointly, and severally liable to-
5 gether with the corporation for the payment of all compensation or
6 other benefits for which the corporation is liable under this chapter
7 if the [SAID] corporation at that [SUCH] time is not insured or quali-
8 fied as a self-insurer.

9 * Sec. 12. AS 23.30.095(a) is amended to read:

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

1 ADMINISTERED BY THE SELECTION OF ANOTHER PHYSICIAN]. Upon procuring
2 the services of a physician, the injured employee shall give proper
3 notification of the selection to the employer within a reasonable time
4 after first being treated. Notice of a change in the attending physi-
5 cian shall be given before the change [IF FOR ANY REASON DURING THE
6 PERIOD WHEN MEDICAL CARE IS REQUIRED THE EMPLOYEE WISHES TO CHANGE TO
7 ANOTHER PHYSICIAN, THE EMPLOYEE MAY DO SO IN ACCORDANCE WITH REGU-
8 LATIONS ADOPTED BY THE BOARD].

9 * Sec. 13. AS 23.30.095(c) is amended to read:

10 (c) A claim for medical or surgical treatment, or treatment
11 requiring continuing and multiple treatments of a similar nature is
12 not valid and enforceable against the employer unless, within 14 days
13 following treatment, the physician giving the treatment or the employ-
14 ee receiving it furnishes to the employer and the board notice of the
15 injury and treatment, preferably on a form prescribed by the board.
16 The board shall, however, excuse the failure to furnish notice within
17 14 days when it finds it to be in the interest of justice to do so,
18 and it may, upon application by a party in interest, make an award for
19 the reasonable value of the medical or surgical treatment so obtained
20 by the employee. A written treatment plan requiring continuing and
21 multiple treatments of a similar nature must include objectives,
22 modalities, and frequency of treatment. The physician shall document
23 the need for services in excess of the guidelines in the written
24 treatment plan.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 (e) If any installment of compensation payable without an award
25 is not paid within seven days after it becomes due, as provided in (b)
26 of this section, there shall be added to the unpaid installment an
27 amount equal to ²⁵ 50 [20] percent of it or ¹⁰⁰ \$300, whichever amount is
28 greater. This additional amount shall be paid at the same time as,
29 and in addition to, the installment, unless notice is filed under (d)

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

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

6 (f) If compensation payable under the terms of an award is not
7 paid within 14 days after it becomes due, there shall be added to that
8 unpaid compensation an amount equal to ²⁵50 [20] percent or ¹⁰⁰\$300 which-
9 ever is greater of it, which shall be paid at the same time as, but in
10 addition to, the compensation, unless review of the compensation order
11 making the award is had as provided in AS 23.30.125 and an interlocu-
12 tory injunction staying payments is allowed by the court.

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

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

1 under (c) of this section shall be waived. If during the preceding
2 year the insurer or adjuster filed 95 percent of the reports on time,
3 50 percent of the penalties assessed under (c) of this section shall
4 be waived. If during the preceding year the insurer's or adjuster's
5 reports have not been filed on time at least 95 percent of the time,
6 none of the penalties assessed under (c) of this section shall be
7 waived. The penalties that are not waived are due and payable when
8 the insurer or adjuster receives notification from the commissioner
9 regarding the timeliness of the reports. If the annual report is not
10 filed by March 1 of each year, the insurer or adjuster shall pay a
11 civil penalty of \$100 for the first day the annual report is late, and
12 \$10 for each additional day the report is late. If the annual report
13 is incomplete when filed, the insurer or adjuster shall pay a civil
14 penalty of \$1,000.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 (1) area of residence;

25 (2) area of last employment;

26 (3) the state of residence; and

27 (4) the State of Alaska.

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

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

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

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

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

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

11 Sec. 23.30.190. COMPENSATION FOR PERMANENT PARTIAL IMPAIRMENT.

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

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

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

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

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

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

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

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

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

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

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

6 (1) The gross weekly earnings are computed by dividing by
7 100 the gross earnings of the employee in the two calendar years
8 immediately preceding the injury.

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

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

23 (4) If the employee is injured while performing duties as a
24 volunteer ambulance attendant, policeman, or fireman, ^{or other full-time employee} the gross weekly
25 earnings for calculating compensation shall be the minimum gross
26 weekly earnings paid a full-time ambulance attendant, policeman, or
27 fireman employed in the political subdivision where the injury oc-
28 curred, or, if the political subdivision has no full-time ambulance
29 attendants, policemen, or firemen, at a reasonable figure previously

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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December 31, 1988.

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

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

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

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

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

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

December 31, 1988.

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Original sponsor: Labor and Commerce
Committee

1 IN THE SENATE

BY THE LABOR AND
COMMERCE COMMITTEE

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

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 (D) the cost of reemployment benefits;

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

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

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

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

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

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

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

25 (f) An employee is not eligible for reemployment benefits if
26 (1) the employer offers employment within the employee's
27 predicted post-injury physical capacities at a wage equivalent to at
28 least the state minimum wage under AS 23.10.065 or 60 percent of the
29 worker's gross hourly wages at the time of injury, whichever is

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

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

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

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

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

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

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

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

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

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

5 (6) the date the plan will commence;

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

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

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

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

16 (1) on the job training;

17 (2) vocational training;

18 (3) academic training;

19 (4) self-employment; or

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

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

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

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

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

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

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

1 cooperated the employer may terminate reemployment benefits on the
2 date of noncooperation. Noncooperation means unreasonable failure to
3 (1) keep appointments;
4 (2) maintain passing grades;
5 (3) attend designated programs;
6 (4) maintain contact with the rehabilitation specialist;
7 (5) cooperate with the rehabilitation specialist in devel-
8 oping a reemployment plan and participating in activities relating to
9 reemployability on a full-time basis;
10 (6) comply with the employee's responsibilities outlined in
11 the reemployment plan; or
12 (7) participate in any planned reemployment activity as
13 determined by the administrator.
14 (o) Upon the request of either party, the administrator shall
15 decide whether the employee has not cooperated as provided under (n)
16 of this section. A hearing before the administrator shall be held
17 within 30 days after it is requested. The administrator shall issue a
18 decision within 14 days after the hearing. Within 10 days after the
19 administrator files the decision, either party may seek review of the
20 decision by requesting a hearing under AS 23.30.110; the board shall
21 uphold the decision of the administrator unless evidence is submitted
22 supporting an allegation of abuse of discretion on the part of the
23 administrator; the board shall render a decision within 30 days after
24 completion of the hearing.
25 (p) In this section
26 (1) "administrator" means the reemployment benefits admin-
27 istrator under AS 23.30.041(a);
28 (2) "employability" means possessing the ability but not
29 necessarily the opportunity to engage in employment that is consistent

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

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

4 (A) area of residence;

5 (B) area of last employment;

6 (C) the state;

7 (D) other states;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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determined by the board, time limitations notwithstanding.

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

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

Amended #6 10/20/00

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

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

1 stress.

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

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

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

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

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

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

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

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

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

1 liability is made, any reimbursement required, including interest at
2 the statutory rate, and all costs and attorneys' fees incurred by the
3 prevailing employer, shall be made within 14 days of the determina-
4 tion. X INSERT AS 23.30.155(E) ADOPTED AS # 7

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

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

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

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

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

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

14 (n) If the employer is self-insured, the requirements of (c) and *AS*
15 (m) of this section apply to the employer. *= 9*

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

22 (p) When an employer pays compensation due under this chapter to
23 an employee residing in this state, the payment must be made by check
24 or other negotiable instrument drawn on funds deposited in this state,
25 or by certified check. *AS 23.30.155 = 10*

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

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

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

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

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

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

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

1 earned in the state;

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

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

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

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

23 (1) area of residence;

24 (2) area of last employment;

25 (3) the state of residence; and

26 (4) the State of Alaska.

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

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

29 AS 23.30.041(m)(7) does not, by itself, constitute permanent total

(3) Aug 11/11
AS 23.30.041
11

P 7 L 28
 P 24 L 13-29 3 15
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 P 28 L 19

4/15/88

TASK FORCE'S NEW
 CHANGES - SHOULD
 NOT OUT TO LTO
 REDUCTION USING
 SEVERAL BILL ACCOUNTING
 TO M. E. R.

1 disability.

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

3 Sec. 23.30.185. COMPENSATION FOR TEMPORARY TOTAL DISABILITY. In

4 case of disability total in character but temporary in quality, 80

5 percent of the injured employee's spendable weekly wages shall be paid

6 to the employee during the continuance of the disability. Temporary

7 total disability benefits may not be paid for any period of disability

8 occurring after the date of medical stability. Temporary total dis-

9 ability benefits may not be paid for more than two years regardless of

10 continuance of the disability.

23.30.185
 AS AMEND
 #12

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

12 Sec. 23.30.190. COMPENSATION FOR PERMANENT PARTIAL IMPAIRMENT.

13 (a) In case of impairment partial in character but permanent in

14 quality, and not resulting in permanent total disability, the compen-

15 sation is \$240,000 multiplied by the employee's percentage of net

16 permanent impairment of the whole person, and payable in a single lump

17 sum, except as otherwise provided in AS 23.30.041, but the compensa-

18 tion may not be discounted for any present value considerations. The

19 percentage of net permanent impairment shall be determined by multi-

20 plying the employee's actual degree of permanent impairment by the

21 appropriate adjustment factor, as follows:

AS AMEND
 #12

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

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

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

1 adopt a supplementary recognized schedule for injuries that cannot be
2 rated by use of the American Medical Association Guides.

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

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

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

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

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

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

1 case that may affect the capacity of the employee to earn wages in a
2 disabled condition, including the effect of disability as it may
3 naturally extend into the future.

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

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

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

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

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

27 (4) If the employee is injured while performing duties as a
28 volunteer ambulance attendant, ~~volunteer~~ ~~fireman~~, policeman, or fireman, the gross weekly
29 earnings for calculating compensation shall be the minimum gross

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

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

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

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

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

27 (b) This section may not be construed to prevent an employer
28 from basing hiring, promotion, or retention policies or practices on
29 considerations of the employee's safety practices or the employee's

1 physical and mental abilities; nor may this section be construed so as
2 to create employment rights not otherwise in existence.

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

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

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

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

28 (17) "injury" means accidental injury or death arising out
29 of and in the course of employment, and an occupational disease or

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

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

18 (34) "medical stability" means the date after which further
19 objectively measurable improvement from the effects of the compensable
20 injury is not reasonably expected to result from additional medical
21 care or treatment, notwithstanding the possible need for additional
22 medical care or the possibility of improvement or deterioration re-
23 sulting from the passage of time; medical stability shall be presumed
24 in the absence of objectively measurable improvement for a period of
25 45 days; this presumption may be rebutted by clear and convincing
26 evidence.

27 * Sec. 42. AS 23.30.210 is repealed.

28 * Sec. 43. TRANSITIONAL PROVISIONS. Notwithstanding AS 23.30.040(b),
29 as amended by sec. 8 of this Act, and AS 23.30.155(m), as amended by

1 sec. 27 of this Act, on or before March 1, 1989, each employer that is
2 subject to those sections shall file a report and make the appropriate
3 contribution for all claims existing as of December 31, 1988. The period
4 covered in the report shall be from the date of the termination report or
5 the last anniversary report filed, if one has been filed, through Decem-
6 ber 31, 1988.

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

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

18 * Sec. 46. APPLICABILITY. Except for secs. 8, 25, 27, 28, 40, and 44
19 of this Act, this Act applies only to injuries sustained on or after
20 July 1, 1988.

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

23 * Sec. 48. Sections 40 and 47 of this Act takes effect immediately
24 under AS 01.10.070(c). AMF # 17

25 * Sec. 49. Sections 1 - 39, and 41 - 46 of this Act take effect July 1,
26 1988.

Original sponsor: Labor and Commerce
Committee

1 IN THE SENATE

BY THE LABOR AND
COMMERCE COMMITTEE

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

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

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

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

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

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

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

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

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

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