

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 86/2  
5378 SLAB SB 322 (file 2) - (file 3)

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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 <sup>2014</sup> ~~moval of~~ rehabilitation specialists or physicians under AS 23.30.041  
27 and 23.30.095, and shall [MAY] adopt regulations to carry out the  
28 provisions of this chapter. Process and procedure under this chapter  
29 shall be as summary and simple as possible. The department, the board

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 (D) the cost of reemployment benefits;

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

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

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

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

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

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

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

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

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

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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 benefits, if the employer believes the employee has not

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

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

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

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

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

25 (p) In this section

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

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

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

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

4 (A) area of residence;

5 (B) area of last employment;

6 (C) the state;

7 (D) other states;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 determined by the board, time limitations notwithstanding.

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

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

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

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

1 stress.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 (n) If the employer is self-insured, <sup>or UNINSURED</sup> the requirements of (c) and  
15 (m) of this section apply to the employer.

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

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

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

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

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

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

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

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

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

1 earned in the state;

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

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

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

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

23 (1) area of residence;

24 (2) area of last employment;

25 (3) the state of residence; and

26 (4) the State of Alaska.

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

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

1 disability.

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

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

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

12 Sec. 23.30.190. COMPENSATION FOR PERMANENT PARTIAL IMPAIRMENT.  
13 (a) In case of impairment partial in character but permanent in  
14 quality, and not resulting in permanent total disability, the compen-  
15 sation is ~~\$240,000~~ <sup>\$135,000</sup> multiplied by the employee's percentage of net  
16 permanent impairment of the whole person, and payable in a single lump  
17 sum, except as otherwise provided in AS 23.30.041, but the compensa-  
18 tion may not be discounted for any present value considerations. [ The  
19 percentage of net permanent impairment shall be determined by multi-  
20 plying the employee's actual degree of permanent impairment by the  
21 appropriate adjustment factor, as follows:

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

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

*DSC 10*

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 (b) 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 <sup>FIVE</sup> 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, 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).

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

SB

322

(FILE 3)

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

Section 1. Parts A and B:

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

Part C:

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

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

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

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

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

Sectional Analysis of SB 322 and HB 352

- Section 5. This section is a minor change made by the administration to provide more timely payments to the Second Injury Fund.
- Section 6. In this section we have completely revised the vocational rehabilitation statute.

Parts A and B:

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

Part C:

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

Part D:

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

Part E:

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

Part F:

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

Part G:

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

Part H:

This discusses who are parties to this contract.

Part I:

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

Part J.

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

*RE-employment  
Programs -*

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

*Sooner They  
Need to  
Return to  
Work!*

Part K:

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

*NECESSARY TO  
COMPLETE PLAN!*

Part L:

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

Part M:

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

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

Note on Section 6:

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

*REQUEST  
TO LOOK AT  
SECTION  
THIS  
AGAIN*

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

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

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

*?*  
*TREATING  
PHYSICIAN  
(1 CHANGE)  
+ SPECIALIST*

Sectional Analysis of SB 322 and HB 352

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

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

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

*fees - they can  
only charge these  
fees, all fees  
may not  
exceed  
this*

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

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

*I.M.E.-*

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

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

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

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

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

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

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

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

IS THAT PRESENTLY IN LAW?  
DISPUTE OF INSURANCE COMPANY

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

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

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

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

*REDUCTION  
ON COSTS  
IF THEY MOVE  
OUT OF STATE*

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

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

Sectional Analysis of SB 322 and HB 352

- Section 22. This section was amended to conform AS 23.30.041's definition of a labor market and to broaden the market for the employee's service in determining permanent total disability.
- Section 23. This is a new section that further clarifies that a failure to satisfy the remunerative employability definition as a wage goal as defined in AS 23.30.041 does not mean that an employee is automatically permanently totally disabled.
- Section 24. This section defines when permanent impairment benefits begin. In no case will temporary total disability benefits be paid beyond the date of medical stability, and temporary total disability benefits may not be paid for more than two years regardless of the continuance of the disability. Our intent here was to disallow the continuance of temporary total disability benefits as it is under the current system and also to conform with the limitation as provided in AS 23.30.041 where a reemployment plan may not exceed two years.
- Section 25. This section was repealed and reenacted. In this section permanent partial impairment payments are based upon the "whole man" concept as set out in the American Medical Association's Guides to the Evaluation of Permanent Impairment. Compensation paid to claimants under this section is based upon total disability of \$240,000 multiplied by the claimant's percentage of net permanent impairment. Impairment levels below 30% are further adjusted by a factor less than one, but in no case is the impairment compensation less than \$250. The intent of this section was to redistribute benefits so that those employees who have a greater percentage of injury receive awards commensurate with their injuries whereas those with minor injuries receive a proportionately less amount of compensation.
- Section 26. This section provides for payment of temporary partial disability benefits only up to the time of medical stability, consistent with the amendment to AS 23.30.185 found in section 24. It also reduces the maximum period for paying temporary partial disability benefits from five to two years.

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

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

Section 28. This section was amended to define what will be used to compute the spendable weekly wage of an employee. Specifically, we were addressing several Supreme Court decisions which fixed spendable weekly wage on future earnings. These cases, such as Johnson v. RCA-OMS, 681 P.2d 905 (Alaska 1984), and its progeny, have made the determination of spendable weekly wage impossible because it is based on the predictability of what someone might be making at some future point in time. We intend to clearly base the determination of spendable weekly wage on the employees' past earnings history except under some very specific cases listed in AS 23.30.220(a)(2) and (3). We believe this change will markedly decrease the amount of litigation over determination of spendable weekly wage.

PREDICTABLE  
AMOUNT  
OF MONEY  
EARNING CAPACITY

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

?

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

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

PENSION +  
PROFIT  
SHARING  
PLAN!

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

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

STRESS

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

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

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

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

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

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

STATE OF ALASKA  
THE LEGISLATURE

POUCHY STATE CAPITOL  
JUNEAU, ALASKA 99811  
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 19, 1988

SUBJECT: Workers' Compensation - CSSB 322 (L&C)

TO: Senator Tim Kelly  
Chairman  
Senate Labor and Commerce Committee

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

The following is a sectional analysis of CSSB 322 (L&C).

Section 1 - Establishes the legislative intent of the bill.

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

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

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

Section 5 - Requires an insurer to provide notice to the department, if certain coverage is extended.

Section 6 - Requires that worker's compensation insurance premiums be paid semiannually, if requested by the insured.

Section 7 - Alters the time for an employer to make required contributions to the second injury fund.

Section 8 - Requires that administrative expenses of the second injury fund must be paid from the second injury fund.

Section 9 - Establishes the responsibility and authority of the department regarding rehabilitation of injured workers. Establishes specific eligibility criteria requirements for rehabilitation plans, specifies reemployment benefits, and duties of the employee while receiving reemployment benefits. Provides time limits for reemployment plans, limits the cost to the employer of the plan, and provides that only a rehabilitation specialist may perform certain casework. Also includes a definitions subsection.

Section 10 - Establishes that the liability of the employer is limited to workers compensation even if the employee is barred from receiving compensation because the employee knowingly made a false employment application.

Section 11 - Limits the employee's designation of a physician to the state where the employee resides. Provides the employee may make only one change of physician without consent of the employer and requires notice of the change.

Section 12 - Establishes that a written plan is required for continuing medical treatment. Specifies the contents of the treatment plan and requires certain documentation.

Section 13 - Provides that the employee shall submit to examination by a physician chosen by the employer, and establishes a presumption of reasonableness for certain examinations.

Section 14 - Establishes a fee standard for medical treatment.

Section 15 - Authorizes the board to appoint a medical services review committee to assist the board in issues regarding the cost of medical services.

Section 16 - Establishes procedures in the event of conflicting medical opinions. Provides for independent medical examination and creates a presumption that this opinion is correct.

Section 17 - Specifies that a claim may be filed within two years of the last payment of certain benefits.

Section 18 - Provides that the presumption of compensability does not apply to a mental injury resulting from work related stress.

Section 19 - Establishes that a finding of fact made by the board in a compensation order and supported by any evidence, is conclusive unless the court specifically finds that a reasonable person could not have reached the conclusion made by the board, if the employer and employee have also met their proof requirements.

Section 20 - Specifies that the board may review a compensation case brought within one year after the last payment of certain benefits.

Section 21 - Provides that certain insurer or adjuster penalties may be reduced as provided under AS 23.30.155(m).

Section 22 - Requires the most recent employer to make temporary disability payments when there is a dispute as to which employer is responsible for compensation.

Section 23 - Requires the employer to submit a report regarding total compensation paid and provides for a reduction in certain late report penalties.

Section 24 - Provides that certain reporting requirements are the duty of the employer, if the employer is self-insured.

Section 25 - Establishes the weekly rate of compensation for disability or death for in-state and out-of-state recipients. Requires the board to establish regulations for determining living costs.

Section 26 - Establishes a market for an employee's services in determining permanent total disability. Requires a reduction in permanent total disability benefits if an award for permanent partial disability has been received.

Section 27 - Provides that failure to achieve remunerative employment as defined in AS 23.30.041(m)(7) does not by itself constitute permanent total disability.

Section 28 - Establishes limits on payment of temporary total disability.

Section 29 - Provides compensation for permanent partial impairment and establishes guidelines for determining the existence and degree of impairment.

Section 30 - Limits payment of temporary partial disability compensation to two years or the date of medical stability.

Section 31 - Provides for determination of an employee's wage earning capacity, for purposes of temporary partial disability compensation.

Section 32 - Provides for calculation of an employee's spendable weekly wage. Limits the compensation due an employee who had no earnings during the two calendar years preceding injury, or was voluntarily absent for 18 months or more of the previous two years.

Section 33 - Establishes a reduction in weekly compensation benefits when an employer makes a contribution to a pension or profit sharing plan of the employee.

Section 34 - Prohibits discrimination against an employee who files a good faith claim for compensation benefits.

Section 35 - Redefines "gross earnings" to include certain pension and profit sharing contributions.

Section 36 - Redefines "injury" to exclude certain mental injuries.

Section 37 - Definition of medical stability.

Section 38 - Repeals existing wage earning determination for partial disability compensation.

Section 39 - Transitional provision for contributions to the second injury fund.

Section 40 - Applicability section.

Section 41 - Effective date.

## ALASKA

### SUMMARY OF KEY PROVISIONS OF HB352 AND SB322

#### 1. STATEMENT OF INTENT

- a. Abolishes the common law rule of liberal construction on behalf of the claimant, and substitutes a standard based upon fairness to all parties.
- b. Provides that the Board's findings of fact are conclusive if supported by any evidence.
- c. Provides that the intent of section 20.30.175 (adjustment to benefits for claimants residing outside Alaska) is to recognize the high cost of living in Alaska, reduce disincentives to return to work, and to remove obstacles to the utilization of vocational rehabilitation.

#### 2. VOCATIONAL REHABILITATION BENEFITS

- a. The entire existing vocational rehabilitation provisions are deleted and completely rewritten.
- b. The board is to select a "reemployment services administrator". This administrator is to adopt regulations and enforce the quality and effectiveness of the reemployment benefits under the workers compensation act.
- c. The vocational rehabilitation program is optional with respects to eligible employees. Employers or employees can request an eligibility evaluation.
- d. An employee is eligible for vocational rehabilitation if a doctor finds permanent physical capacities less than the physical demands of the employee's job.
- e. An employee is not eligible for vocational rehabilitation if the employer offers a job within the employee's predicted post-injury capacities at a wage equivalent to 60 percent of the former hourly wage and this job prepares the employee to be employable in other jobs in the labor market. In addition, employees are not eligible if they have been previously injured and rehabilitated to a similar occupation in terms of physical demands.
- f. The employer and employee must agree upon a rehabilitation specialist or one will be selected by the administrator. The employer and employee are to agree upon a reemployment plan or one will be selected by the administrator.

- g. Non-cooperation on the part of the employee in a rehabilitation plan shall result in a termination of the reemployment benefits.
- h. Time constraints are enacted regarding the election of the eligibility evaluation (60 days from injury), the determination of eligibility (30 days from request), selection of a specialist (10 days from determination of eligibility) and approval of the plan (90 days from determination of eligibility).
- i. The cost of the reemployment plan may not exceed \$10,000 and may not exceed two years. Temporary total benefits are to be paid until the employee is medically stationary. After medical stability, permanent impairment benefits are to be paid at the temporary total rate during the continuance of the plan. If the plan is completed prior to the exhaustion of the permanent impairment benefits, the remainder is to be paid in a lump sum. If permanent impairment benefits are exhausted prior to the completion of the plan additional weekly benefits are to be paid. Such additional benefits are to be equal to 60 percent of the employee's spendable wage not to exceed \$525. The costs of the reemployment specialist are in addition to the costs of the plan. All vocational rehabilitation expenses are to be paid by the employer.

3. BENEFIT FORMULA CHANGES

- a. The maximum weekly benefit is reduced from the current \$1108 to \$700. The minimum weekly benefit remains at \$110. However, if the employee can document his wages, the minimum is increased to 100% of the spendable wages or \$154, whichever is less. The benefit formula works as follows:

<u>Spendable Wage</u>	<u>Benefit</u>
Less than \$110	\$110 or 100% spendable
\$110 to \$154	100% spendable wage
\$154 to \$192.50	\$154
\$192.50 to \$875	80% spendable wage
over \$875	\$700

- b. Temporary disability is to stop at the earlier of medical stability or two years, whichever is earlier. Current law has no limit, but temporary disability is stopped upon release to employment.

- c. Permanent partial benefits are to be based upon the impairment to the whole man based upon the AMA guides. The amount is to be paid in a lump sum and is calculated as \$240,000 x %impairment x conversion factor. The conversion factors are based upon the % impairment as follows:

<u>% impairment</u>	<u>conversion factor</u>
0-5	0.0
6-10	0.2
11-15	0.4
16-20	0.6
21-25	0.7
26-30	0.8
over 31	1.0

- d. Clarifies the rules used by the board for determination of the employee's wages for benefit computation.
- e. Allows employer's contributions to a pension or profit sharing plan during the two preceding years to be included as wages to the extent of the employee's vested interest. This section codified existing case law in Ragland v. Morrison-Knudsen Co., Inc., 724 P2d 579 (Alaska 1986).

#### 4. DEFINITIONAL CHANGES

- a. The point of "medical stability" is defined as the point where further objectively measurable improvement is not expected. Medical stability is presumed in the absence of objectively measurable improvement for a period of 45 days; such presumption may be rebutted by clear and convincing evidence.
- b. The definition of "injury" is modified to exclude mental injury caused by mental stress (with certain exceptions).

#### 5. CHANGES TO MEDICAL

- a. Medical payments may not exceed usual, customary, and reasonable fees as determined by the Board.
- b. Employee choice of physician is maintained, but the employee may not make more than one change (excluding referrals) without the employer's written consent.

- c. Courses of multiple treatments must be made in accordance with a written plan that is mailed to the employer within the first week of treatment. The initial treatment plan may not include more than 20 visits in the first 60 days. Documented need is required of the physician for plans exceeding these specifications.
- d. Employer's medical examinations of employees within the first 14 days and every 30 days thereafter are presumed to be reasonable.
- e. In the event of a medical dispute between the employee's attending physician and the employer's independent medical evaluation, a second independent medical exam will be performed by a physician selected from a panel by the Board. This second evaluation will be presumed to be correct in the absence of clear and convincing objective evidence to the contrary.

6. OTHER

- a. The statute of limitations is clarified to exclude medical payments as "compensation" in determining the two year limit from last payment.
- b. Exclude workers compensation claims where the employee makes false statements regarding physical condition on the employment application, where the employer relied upon the false information, and where there is a causal relationship between the injury and the false representation.
- c. The most recent employer is to pay temporary disability benefits where there is a dispute as to which employer is responsible.

## ALASKA

### SUMMARY OF KEY PROVISIONS OF HB352 AND SB322

#### 1. STATEMENT OF INTENT

- a. Abolishes the common law rule of liberal construction on behalf of the claimant, and substitutes a standard based upon fairness to all parties.
- b. Provides that the Board's findings of fact are conclusive if supported by any evidence.
- c. Provides that the intent of section 20.30.175 (adjustment to benefits for claimants residing outside Alaska) is to recognize the high cost of living in Alaska, reduce disincentives to return to work, and to remove obstacles to the utilization of vocational rehabilitation.

#### 2. VOCATIONAL REHABILITATION BENEFITS

- a. The entire existing vocational rehabilitation provisions are deleted and completely rewritten.
  - b. The board is to select a "reemployment services administrator". This administrator is to adopt regulations and enforce the quality and effectiveness of the reemployment benefits under the workers compensation act.
  - c. The vocational rehabilitation program is optional with respects to eligible employees. Employers or employees can request an eligibility evaluation.
  - d. An employee is eligible for vocational rehabilitation if a doctor finds permanent physical capacities less than the physical demands of the employee's job.
  - e. An employee is not eligible for vocational rehabilitation if the employer offers a job within the employee's predicted post-injury capacities at a wage equivalent to 60 percent of the former hourly wage and this job prepares the employee to be employable in other jobs in the labor market. In addition, employees are not eligible if they have been previously injured and rehabilitated to a similar occupation in terms of physical demands.
2. The employer and employee must agree upon a rehabilitation specialist or one will be selected by the administrator. The employer and employee are to agree upon a reemployment plan or one will be selected by the administrator.

- g. Non-cooperation on the part of the employee in a rehabilitation plan shall result in a termination of the reemployment benefits.
- h. Time constraints are enacted regarding the election of the eligibility evaluation (60 days from injury), the determination of eligibility (30 days from request), selection of a specialist (10 days from determination of eligibility) and approval of the plan (90 days from determination of eligibility).
- i. The cost of the reemployment plan may not exceed \$10,000 and may not exceed two years. Temporary total benefits are to be paid until the employee is medically stationary. After medical stability, permanent impairment benefits are to be paid at the temporary total rate during the continuance of the plan. If the plan is completed prior to the exhaustion of the permanent impairment benefits, the remainder is to be paid in a lump sum. If permanent impairment benefits are exhausted prior to the completion of the plan additional weekly benefits are to be paid. Such additional benefits are to be equal to 60 percent of the employee's spendable wage not to exceed \$525. The costs of the reemployment specialist are in addition to the costs of the plan. All vocational rehabilitation expenses are to be paid by the employer.

3. BENEFIT FORMULA CHANGES

- a. The maximum weekly benefit is reduced from the current \$1108 to \$700. The minimum weekly benefit remains at \$110. However, if the employee can document his wages, the minimum is increased to 100% of the spendable wages or \$154, whichever is less. The benefit formula works as follows:

<u>Spendable Wage</u>	<u>Benefit</u>
Less than \$110	\$110 or 100% spendable
\$110 to \$154	100% spendable wage
\$154 to \$192.50	\$154
\$192.50 to \$875	80% spendable wage
over \$875	\$700

- b. Temporary disability is to stop at the earlier of medical stability or two years, whichever is earlier. Current law has no limit, but temporary disability is stopped upon release to employment.

- c. Permanent partial benefits are to be based upon the impairment to the whole man based upon the AMA guides. The amount is to be paid in a lump sum and is calculated as \$240,000 x %impairment x conversion factor. The conversion factors are based upon the % impairment as follows:

<u>% impairment</u>	<u>conversion factor</u>
0-5	0.0
6-10	0.2
11-15	0.4
16-20	0.6
21-25	0.7
26-30	0.8
over 31	1.0

- d. Clarifies the rules used by the board for determination of the employee's wages for benefit computation.
- e. Allows employer's contributions to a pension or profit sharing plan during the two preceding years to be included as wages to the extent of the employee's vested interest. This section codified existing case law in Rafland v. Morrison-Knudsen Co., Inc., 724 P2d 579 (Alaska 1986).

#### 4. DEFINITIONAL CHANGES

- a. The point of "medical stability" is defined as the point where further objectively measurable improvement is not expected. Medical stability is presumed in the absence of objectively measurable improvement for a period of 45 days; such presumption may be rebutted by clear and convincing evidence.
- b. The definition of "injury" is modified to exclude mental injury caused by mental stress (with certain exceptions).

#### 5. CHANGES TO MEDICAL

- a. Medical payments may not exceed usual, customary, and reasonable fees as determined by the Board.
- b. Employee choice of physician is maintained, but the employee may not make more than one change (excluding referrals) without the employer's written consent.

- c. Courses of multiple treatments must be made in accordance with a written plan that is mailed to the employer within the first week of treatment. The initial treatment plan may not include more than 20 visits in the first 60 days. Documented need is required of the physician for plans exceeding these specifications.
- d. Employer's medical examinations of employees within the first 14 days and every 30 days thereafter are presumed to be reasonable.
- e. In the event of a medical dispute between the employee's attending physician and the employer's independent medical evaluation, a second independent medical exam will be performed by a physician selected from a panel by the Board. This second evaluation will be presumed to be correct in the absence of clear and convincing objective evidence to the contrary.

#### 6. OTHER

- a. The statute of limitations is clarified to exclude medical payments as "compensation" in determining the two year limit from last payment.
- b. Exclude workers compensation claims where the employee makes false statements regarding physical condition on the employment application, where the employer relied upon the false information, and where there is a causal relationship between the injury and the false representation.
- c. The most recent employer is to pay temporary disability benefits where there is a dispute as to which employer is responsible.

STATE OF ALASKA  
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

January 12, 1988

SUBJECT: Workers' Compensation - SB 322

TO: Senator Tim Kelly  
Chairman  
Senate Labor and Commerce Committee

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

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

Section 1 - Establishes the legislative intent of the bill.

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

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

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

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

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

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

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

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

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

Section 11 - Establishes a fee standard for medical treatment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 33 - Definition of medical stability.

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

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

Section 36 - Applicability section.

Section 37 - Effective date.

MFF:bb  
WKB1/041

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_  
Title: "An act relating to Workers' Compensation"  
Sponsor: Senate Labor and Commerce  
Requestor: Senate Labor and Commerce

Agency Affected: Labor  
BRU: Workers' Compensation  
Components: Workers' Compensation

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

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

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

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

Distribution (by preparer):

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

## Analysis of Fiscal Note

For SB 322

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

### 1. Additional Information Requirements

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

### 2. Annual Cost of Living Survey

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

### Assumptions:

1. An effective date of July 1, 1988.

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_  
Title: "An act relating to Workers' Compensation"  
Sponsor: Senate Labor and Commerce  
Requestor: Senate Labor and Commerce

Agency Affected: Labor  
BRU: Workers' Compensation  
Components: Workers' Compensation

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL		124.0	49.7	49.7	49.7	49.7
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		124.0	49.7	49.7	49.7	49.7
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND			(74.3)	(74.3)	(74.3)	(74.3)
FEDERAL FUNDS						
OTHER *		124.0	124.0	124.0	124.0	124.0
TOTAL		124.0	49.7	49.7	49.7	49.7

\*Second Injury Fund POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

(See Attached)

Prepared by: Jacque McClintock Phone: 465-2790  
Division: Workers' Compensation Date: 2-22-88  
Approved by Commissioner: Jim Sampson Date: 2-22-88  
Agency: Labor

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

## Analysis of Fiscal Note

For CSSB 322(L&C)

This bill would require the Department of Labor to keep track of certain Workers' Compensation information it is not currently tracking, and would also require an annual cost of living survey of the 50 states and 10 foreign countries. Details of these two additional costs are as follows:

### 1. Additional Information Requirements

As a result of this bill, additional detail on information items for each workers' compensation claim would have to be reported by employers/ insurers on a by claim and annual basis. This additional information would be input into our computer database which would require a change in the computer programs associated with that system. Estimated costs are \$57,500 to modify the programs, and an additional \$13,000 in CPU time to test and verify the modifications. The total one-time data processing cost would therefore be \$70,500.

### 2. Annual Cost of Living Survey

An annual cost of living survey would be required to adjust the compensation to those workers compensation recipients who move from Alaska. We estimate that 250 locations (an average of 5 per state) would have to be surveyed each year. In addition, we estimate that 10 foreign locations would have to be surveyed each year at an approximate cost of \$350 per site. At \$200 per site, the total cost the first year would be \$53,500. The cost of the survey in future years would decrease slightly to an estimated \$49,700 a year.

### Assumptions:

1. An effective date of July 1, 1988.

2. Per the bill, Second Injury Funds will now be utilized to pay the administrative costs associated with the Second Injury program. The savings to the existing general funds in the Worker's Compensation BRU will then be available to fund the costs of this bill.

ALASKA STATE SENATE



SENATOR TIM KELLY  
ANCHORAGE/EAGLE RIVER  
CHAIRMAN

SENATOR DICK ELIASON  
SITKA  
VICE CHAIRMAN

LABOR AND COMMERCE COMMITTEE

MEMBERS  
SENATOR BETTYE FAHRENKAMP  
FAIRBANKS

SENATOR RICK UEHLING  
ANCHORAGE

SENATOR MIKE SZYMANSKI  
ANCHORAGE

DIFFERENCES IN CSSB 322 FROM ORIGINAL

Page 1 Line 11; after "efficient," insert "fair,".

Page 1 Line 20; after "conclusive", insert "unless the court finds that a reasonable person could not have reached the conclusion made by the board."

Page 2 Line 5; change "may" to "shall"; delete "identical".

Page 2 Line 8; change "may" to "shall".

Page 2 Line 22; delete "shall immediately", insert "may".

Page 3 Line 3; a new section 5 is inserted requiring insurers to notify the department of all policies naming Alaska in their all states coverage section.

Page 3 Line 8; a new section 6 is inserted to require that annual premiums of more than \$2,000 may be paid twice a year and that notice of this clause will be given to the insured.

Page 4 Line 15; a new section 8 is inserted allowing the second injury fund to be used for administrative expenses of this section."

Page 4 - 12; Sec. 9 Rehabilitation - has been rewritten in a new format with only a few substantive changes;

Page 5 L9 -11; a phrase is inserted to further clarify the administrator's report.

P6 L1 - 5; sentence from P8 L5-9 inserted; 60 increased to 90.

P6 L6; after "rotating" insert "and geographic".

P6 L28; change "and" to "or".

P7 L1; after "held" insert "or received training for".

P7 L9 - 10; a phrase is inserted to provide a floor is this section of the minimum wage.

P7 L15 & 16; after "demands" insert "required of the employee at the time of the previous injury; or".

P7 L17 & 18; insert "(3) at the time of medical stability no permanent impairment is identified or expected."

P8 L4; after "(1)", insert "a determination of".

P8 L6 - 8; a new paragraph 2 is inserted to require an inventory of the employee's abilities.

P8 L16; after "the", insert "estimated".

P8 L18; a new paragraph 8 is inserted to require a detailed description and schedule of the plan.

P8 L19 - 22; a new paragraph 9 is inserted to require findings in the plan.

P10 L11; after "means" insert "unreasonable".

P10 L13; delete "average", insert "passing".

P10 L23 - P11 L4; new paragraph inserted to provide for an appeal process in the determination of noncooperation.

P11 L6 & 7; definition of administrator is inserted.

P11 L10; "or disease" is deleted from the end of the phrase.

P11 L28 & 29; after "specialist," insert "a certified rehabilitation counselor".

Page 14 Line 13; after "commencement", insert "of the course".

Page 14 Line 29; delete "30", insert "60".

Page 15 Line 3 & 4; after "board.", insert "Unless medically appropriate, the physician shall use existing diagnostic data to complete the examination."

Page 16 Lines 2 - 4; a sentence is inserted to clarify that the employee will not have to pay for services.

Page 16 Line 13; after "stability," insert "the ability to enter a re-employment plan,".

Page 16 Lines 27 - 28; after "fraud" insert "or gross incompetence".

Page 17 Lines 23 - 24; delete language after "conclusive", insert "unless the court specifically finds that a reasonable person could not have reached the conclusion made by the board".

Page 18 Line 10; delete "employer" insert "insurer or adjuster".

Page 18 Line 23; delete "employer fails to notify the".

Page 18 Line 23; after "employee" insert "are not notified".

Page 18 Line 25; delete "employer" insert "insurer or adjuster".

Page 18 Line 27; delete "employer failed to give".

Page 18 Line 27; before "." insert "was not given".

Page 19 Line 1 - 4; a new sentence is included regarding penalties.

Page 19 Line 24; delete "employer", insert "insurer or adjuster".

Page 20 Lines 2,4,7,9,12 & 15; delete "employer" insert "insurer or adjuster".

Page 20 Lines 3,4,6,9 & 11; insert "during the preceding year".

Page 20 Lines 17-20; insert " If the annual report is not filed by March 1 of each year, the insurer or adjuster shall pay a civil penalty of \$100 for the first day the annual report is late, and \$10 for each additional day the report is late."

Page 20 Line 22 & 23; insert a new section stating that for self-insureds the notification and penalty sections are the responsibility of the employer.

Page 20 Line 26; delete "for a recipient residing in the state".

Page 21 Line 3 - 7; insert "If the employer can verify that the employee's spendable weekly wages are less than \$154, the employer may adjust the weekly rate of compensation to the employee's weekly spendable wages without an order of the board."

Page 21 Line 19: delete "locality" insert "area".

Page 21 Line 20: delete "of the", insert "in this".

Page 21 Line 24: delete "average" insert "gross"; delete "wage" insert "earnings".

Page 22 Line 4: after "determination", insert "and comparison"; delete "the", insert "this"; delete "other localities" insert "the other areas".

Page 22 Lines 10 - 14; a new sentence is inserted to prevent a person from improperly receiving both PPD and PTD.

Page 22 Line 22; after "state" insert "of residence; and"

Page 22 Line 23; insert a new line, "(4) the state of Alaska."

Page 23 Line 21; a new schedule of adjustment factors is used to smooth out the curve.

Page 24 Line 27; delete "and use a supplemental", insert "a supplementary recognized".

Page 25 Line 18; delete "unless otherwise provided under AS 23.30.041"

Page 26 Line 18; after "employee's", insert "projected gross weekly".

Page 30 Line 3; insert "Except for sections 7, 21, 23 and 24 of this Act,".

ALASKA STATE SENATE



SENATOR TIM KELLY  
ANCHORAGE/EAGLE RIVER  
CHAIRMAN

SENATOR DICK ELIASON  
SITKA  
VICE CHAIRMAN

LABOR AND COMMERCE COMMITTEE

MEMBERS  
SENATOR BETTYE FAHRENKAMP  
FAIRBANKS

SENATOR RICK UEHLING  
ANCHORAGE

SENATOR MIKE SZYMANSKI  
ANCHORAGE

DIFFERENCES IN CSSB322 FROM ORIGINAL

Page 1 Line 11; after "efficient," insert "fair,".

Page 1 Line 20; delete "any", insert "substantial".

Page 2 Line 4; change "may" to "shall".

Page 2 Line 7; change "may" to "shall".

Page 2 Line 20; delete "shall immediately", insert "may".

Page 3 Line 2; a new section 5 is inserted to require that premiums may be paid twice a year and that notice of this clause will be given to the insured.

Page 4 - 11; Sec. 7 Rehabilitation - has been rewritten in a new format with only a few substantive changes;

P5 L18 - 22; sentence from P8 L5-9 inserted; 60 increased to 90.

P5 L23; after "rotating" insert "and geographic".

P6 L18; after "held" insert "or received training for".

P7 L2 & 3; after "demands" insert "required of the employee at the time of the previous injury; or".

P7 L4 & 5; insert "(3) at the time of medical stability no permanent impairment is identified or expected."

P7 (g); this is rewritten to clarify the process to be used to select a rehabilitation specialist.

P7 L28; after "the", insert "estimated".

P9 L18; after "means" insert "unreasonable".

P9 L16; delete "average", insert "passing".

P10 L1 - 11; new paragraph inserted to provide for an appeal process in the determination of noncooperation.

P10 L13 & 14; definition of administrator is inserted.

P10 L17; "or disease" is deleted from the end of the phrase.

P11 L6 & 7; after "specialist," insert "a certified rehabilitation counselor".

Page 13 Line 19; after "commencement", insert "of the course".

Page 14 Line 9 & 10; after "board.", insert "Unless medically necessary, the physician shall use existing diagnostic data to complete the examination."

Page 15 Line 17; after "stability," insert "the ability to enter a re-employment plan,".

Page 16 Line 3; after "fraud" insert "or gross incompetence".

Page 16 Line 27; delete "any" insert "substantial".

Page 17 Line 13; delete "employer" insert "insurer or adjuster".

Page 17 Line 26; delete "employer fails to notify the".

Page 17 Line 26; after "employee" insert "are not notified".

Page 17 Line 28; delete "employer" insert "insurer or adjuster".

Page 18 Line 1; delete "employer failed to give".

Page 18 Line 1; before "." insert "was not given".

Page 18 Line 4 - 7; a new sentence is included regarding penalties.

Page 18 Line 27, Page 19 Lines 5,7,9,11,13 & 17; delete "employer" insert "insurer or adjuster".

Page 19 Line 6; after "filed" insert "during the preceding year".

Page 19 Lines 18-21; insert " If the annual report is not filed by March 1 of each year, the insurer or adjuster shall pay a civil penalty of \$100 for the first day the annual report is late, and \$10 for each additional day the report is late."

Page 19 Line 22; insert a new section stating that for self-insureds the notification and penalty sections don't apply.

Page 19 Line 27; delete "for a recipient residing in the state".

Page 20 Line 4; insert "If the employer can verify that the employee's spendable weekly wages are less than \$154, the employer may adjust the weekly rate of compensation to the employee's weekly spendable wages without an order of the board."

Page 20 Line 21: after "living" insert "index".

Page 20 Line 22: after "living" insert "index"; delete "the" insert "this".

Page 20 Line 26: delete "average" insert "gross"; delete "wage" insert "earnings".

Page 21 Line 6: delete "the", insert "this"; delete "localities" insert "states".

Page 21 Line 20; after "state" insert "of residence; and"

Page 21 Line 21; insert a new line, "(4) the state of Alaska."

Page 23 Lines 2-6: reformatted to give priority in determining impairment.

Page 23 Line 25; delete "unless otherwise provided under AS 23.30.041"

Page 28 Line 10; insert "Except for sections 6,19,21 and 23 of this Act,".

# Municipality of Anchorage

## MEMORANDUM

DATE: February 24, 1988

TO: Mark Johnson  
Legislative Liaison

FROM: Harry Sjoberg //  
Risk Management

SUBJECT: CSSB 322 Workers Compensation

The original bill was supported by this office with a projected annual savings of \$500,000 to \$750,000 to the Municipality if it passed in its original form.

The substitute bill with changes should not be a significant factor in decreasing savings when compared to the original. It is true Sec. 23.30.190 does allow an increase for persons at the low end of the rating scale but the breakdown in degree of impairment should result in a more equitable rating.

The large savings resulting from passage of the bill will come from areas addressed by the bill such as stress and rehabilitation and other areas of high expense.

The Municipal Risk Management Office supports the bill and does not feel the substitute language will have a significant effect.

HES:ps

cc: Trudie Alford

Proposed changes to CSSB 322 (L&C)

- 1) Page 3 Line 9; reword to say "an annual premium paid for the insurance, that exceeds \$2,000, may be paid semi-annually, if requested by the insured."
- 2) Page 6 Line 28; change "and" to "or".
- 3) Page 26 Line 18; after "employee's" insert "projected".

ALASKA STATE SENATE



SENATOR TIM KELLY  
ANCHORAGE/EAGLE RIVER  
CHAIRMAN

MEMBERS  
SENATOR BETTYE FAHRENKAMP  
FAIRBANKS

SENATOR DICK ELIASON  
SITKA  
VICE CHAIRMAN

LABOR AND COMMERCE COMMITTEE

SENATOR RICK UEHLING  
ANCHORAGE

SENATOR MIKE SZYMANSKI  
ANCHORAGE

February 23, 1988

MEMORANDUM

To: All Senators

From: Senator Tim Kelly *TJK*

After a considerable amount of input and effort we have agreed upon a workers' compensation bill that the Labor & Commerce Committee passed out yesterday. CSSB 322(L&C) has been scheduled for floor action on Thursday, February 25.

To assist you in your review of this, I am providing you a packet including a sectional analysis from the legal department, a more detailed analysis done by my staff, a list of the differences between the original bill and the CS and as well as other miscellaneous information.

If I can be of further assistance to you please contact my office.

ALASKA STATE SENATE



SENATOR TIM KELLY  
ANCHORAGE/EAGLE RIVER  
CHAIRMAN

SENATOR DICK ELIASON  
SITKA  
VICE CHAIRMAN

LABOR AND COMMERCE COMMITTEE

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FAIRBANKS

SENATOR RICK UEHLING  
ANCHORAGE

SENATOR MIKE SZYMANSKI  
ANCHORAGE

TO: All Senators

FROM: Senator Tim Kelly *TDK*

Re: SB 322 Workers' Compensation Schedule

This schedule is to keep you updated on the status of the workers' compensation legislation. All the hearings are being held jointly with the House Labor & Commerce Committee and all members of the Senate are invited to attend.

Tuesday, January 19, 3:00 to 5:00 - Capitol Rm. 518

Overview of U.S. and Alaska Workers' Compensation Systems

Presentation and explanation of SB 322 by the Labor/Management Task Force on Workers' Compensation.

Discussion by the Division of Insurance on the impact of proposed legislation on workers' compensation premium rates.

Statewide teleconference - listen only

Thursday, January 21, 3:00 to 5:00 - Capitol Rm. 518

SB 322 "An Act relating to Workers' Compensation."

Public Hearing - Juneau

Statewide Teleconference, listen only

Friday, January 29, 9:00 - 12:00/2:00 - 4:00 Anchorage LIO

SB 322 "An Act relating to Workers' Compensation."

Public Hearing - Statewide Teleconference

Friday, February 12, 9:00 - 12:00/2:00 - 4:00 Anchorage LIO

SB 322 "An Act relating to Workers' Compensation."

Public Hearing - Statewide Teleconference

ALASKA STATE SENATE



SENATOR TIM KELLY  
ANCHORAGE/EAGLE RIVER  
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LABOR AND COMMERCE COMMITTEE

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FAIRBANKS

SENATOR RICK UEHLING  
ANCHORAGE

SENATOR MIKE SZYMANSKI  
ANCHORAGE

TO: All Senators

FROM: Sen. Tim Kelly *TDK*

January 8, 1988

-----  
This bill has been negotiated by the organized labor/management task force during the past ten months. It will be introduced Monday as SB322. The House Labor and Commerce Committee will be introducing an identical version of this also.

ALASKA STATE SENATE



SENATOR TIM KELLY  
ANCHORAGE/EAGLE RIVER  
CHAIRMAN

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FAIRBANKS

SENATOR DICK ELIASON  
SITKA  
VICE CHAIRMAN

LABOR AND COMMERCE COMMITTEE

SENATOR RICK UEHLING  
ANCHORAGE

SENATOR MIKE SZYMANSKI  
ANCHORAGE

January 28, 1988

MEMORANDUM:

To: All Senators  
From: Senator Tim Kelly *TDK*  
Re: SB 322 Worker's Compensation

I'm sure each of you are aware of the current condition of the worker's compensation program. To expedite a remedy, we have been working closely with the House Labor & Commerce Committee. SB 322 and HB 352 have been introduced as identical bills. We have already held 3 joint hearings and have 2 more scheduled.

In order to possibly have an affect on the rates for the second half of 1988, we must pass legislation early this session. It is our plan to have the worker's compensation bill to the Senate floor before the first of March.

If there is anything my office can do to assist you on this issue please let us know.

I am also attaching a fact sheet from Rep. Donley showing some of the significant items that workers gain in the worker's compensation bill.

# HOUSE LABOR AND COMMERCE COMMITTEE

ALASKA STATE LEGISLATURE

P.O. BOX V, JUNEAU 99811

(907) 465-3892



HB 352/SB 322 - Relating to Workers' Compensation

## WHAT'S IN IT FOR WORKERS?

### THE BIG THREE:

1. Significant raise in payments for permanent, partial disability with a system that assures substantial payments to workers with the most serious injuries.
2. Raise in weekly benefits for workers at the bottom end of the scale and lowering the maximum benefit. This statute change will raise benefits for the majority of injured workers since less than five percent are near the maximum benefit level.
3. Requires that pension and benefits be included in calculating a workers average weekly wage for the purposes of determining workers' compensation benefit levels (this is in response to the Hagland case).

### AND A FEW MORE

4. Assures that an injured worker will immediately receive benefits when there is argument about which carrier is obligated to pay. Currently an injured worker may go months with no benefits because of a technical squabble among carriers.
5. Prohibits discrimination against a workers who has filed a workers' compensation claim.
6. Makes rehabilitation services voluntary instead of mandatory so that workers aren't forced to participate in a program they don't want and probably can't benefit from as a condition of receiving benefits.

Prepared by Representative Dave Donley, Chair  
House Labor and Commerce Committee  
January 20, 1988

STATE OF ALASKA  
1988 LEGISLATIVE SESSION

BILL VERSION : HCS CSSB 322(Jud)

PUBLISH DATE : \_\_\_\_\_

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_ Agency Affected: Labor  
 Title: "An Act relating to Worker's Compensation" BRU: Worker's Compensation  
 Sponsor: Senate Labor & Commerce Components: \_\_\_\_\_  
 Requestor: House Judiciary Worker's Compensation

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL		124.0	49.7	49.7	49.7	49.7
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	124.0	49.7	49.7	49.7	49.7

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

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

FUNDING: (Thousands of Dollars)

GENERAL FUND			(74.3)	(74.3)	(74.3)	(74.3)
FEDERAL FUNDS						
OTHER *		124.0	124.0	124.0	124.0	124.0
TOTAL	0.0	124.0	49.7	49.7	49.7	49.7

\* Second Injury Fund

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

(See Attached)

Prepared by: Jacque McClintock Phone: 465-2790  
 Division: Worker's Compensation Date: 4/27/88  
 Approved by Commissioner: Jim Sampson Date: 4/27/88  
 Agency: Department of Labor

Distribution (by preparer) :

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

## Analysis of Fiscal Note

For HCS CSSB 322 (Jud)

This bill would require the Department of Labor to keep track of certain Worker's Compensation information it is not currently tracking, and would also require an annual cost of living survey of the 50 states and 10 foreign countries. Details of these two additional costs are as follows:

### 1. Additional Information Requirements

As a result of this bill, additional detail on information items for each workers' compensation claim would have to be reported by employers/insurers on a by claim and annual basis. This additional information would be input into our computer database which would require a change in the computer programs associated with that system. Estimated costs are \$57,500 to modify the programs, and an additional \$13,000 in CPU time to test and verify the modifications. The total one-time data processing cost would therefore be \$70,500.

### 2. Annual Cost of Living Survey

An annual cost of living survey would be required to adjust the compensation to those workers' compensation recipients who move from Alaska. We estimate that 250 locations (an average of 5 per state) would have to be surveyed each year. At \$200 per site, the total cost the first year would be \$50,000. In addition, we estimate that 10 foreign locations would have to be surveyed each year at an approximate cost of \$350 per site, or \$3,500 per year. This would make a total of \$53,500 for all sites for the first year. The cost of the survey in future years would decrease slightly to an estimated \$49,700 a year.

### Assumptions:

1. An effective date of July 1, 1988.
2. Per the bill, Second Injury Funds will now be utilized to pay the administrative costs associated with the Second Injury Program. The savings to the existing general funds in the Workers' Compensation BRU will then be available to fund the cost of this bill.

# STATE OF ALASKA THE LEGISLATURE

FOUCH Y STATE CAPITOL  
JUNEAU, ALASKA 99811  
907 465 3800

## LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

December 17, 1987

SUBJECT: Workers' Compensation  
(Work Order No. 15-1514)

TO: Senator Tim Kelly  
Chairman, Senate Labor and Commerce

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

The changes you requested to the existing workers' compensation laws have been incorporated into the attached draft. The draft language received from your office has been changed for purposes of form and style. There are a few substantive matters that remain unresolved that I wanted to bring to your attention:

1. Although there is a reference in section 2 to "panels established in AS 23.30.041 and 23.30.095", I could not find any language establishing panels in those sections. Therefore, the language in section 2 has been slightly changed.
2. The applicability section, section 34, provides that the Act applies to injuries sustained after July 1, 1988, which is also the effective date of the bill. But several sections of the bill would apply to injuries sustained prior to July 1, at least regarding reporting of compensation and contribution to the second injury fund. Specifically you may want sections 4, 18, and 33 to have retroactive application. If those sections are to apply to the entire calendar year, rather than the period after the effective date of the bill then the applicability section should be changed.
3. There may be constitutional equal protection problems concerning the exclusivity language in section 6, which would prevent an employee who is barred from receiving compensation benefits from bringing a lawsuit for any injuries sustained. In combination with section 3, an injured employee guilty of this kind of misconduct would be denied

Senator Tim Kelly  
Page 2  
December 17, 1987

both workers' compensation and access to the courts. The constitutional question should be researched.

Please contact me if you have any further questions.

MFF:mi  
wkmi1/109

STATE OF ALASKA  
1988 LEGISLATIVE SESSION

BILL VERSION : HCS CSSB 322(Jud)  
PUBLISH DATE : \_\_\_\_\_

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_ Agency Affected: Labor  
Title: "An Act relating to Worker's Compensation" BRU: Worker's Compensation  
Sponsor: Senate Labor & Commerce Components: \_\_\_\_\_  
Requestor: House Judiciary Worker's Compensation

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\* Second Injury Fund

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

(See Attached)

Prepared by: Jacque McClintock Phone: 465-2790  
Division: Worker's Compensation Date: 4/27/88  
Approved by Commissioner: Jim Sampson Date: 4/27/88  
Agency: Department of Labor

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

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For HCS CSSB 322 (Jud)

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OFFICE OF THE COMMISSIONER  
Division of Insurance  
XEROX TELECOPIER 295  
3601 C STREET, SUITE 722  
ANCHORAGE, ALASKA 99503  
(907) 562-3626  
Telecopy #(907)562-0048

TELECOPIER TRANSMITTAL SHEET

TO: TIM KELLY

FROM: PAUL ROLLER, Dep. Director  
Division of Insurance

NUMBER OF PAGES, INCLUDING TRANSMITTAL SHEET: 5

DATE: 2/8/88

TIME: 9:45 a.m.

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#20

## ALASKA

### SUMMARY OF KEY PROVISIONS OF HB352 AND SB322

#### 1. STATEMENT OF INTENT

- a. Abolishes the common law rule of liberal construction on behalf of the claimant, and substitutes a standard based upon fairness to all parties.
- b. Provides that the Board's findings of fact are conclusive if supported by any evidence.
- c. Provides that the intent of section 20.30.175 (adjustment to benefits for claimants residing outside Alaska) is to recognize the high cost of living in Alaska, reduce disincentives to return to work, and to remove obstacles to the utilization of vocational rehabilitation.

#### 2. VOCATIONAL REHABILITATION BENEFITS

- a. The entire existing vocational rehabilitation provisions are deleted and completely rewritten.
- b. The board is to select a "reemployment services administrator". This administrator is to adopt regulations and enforce the quality and effectiveness of the reemployment benefits under the workers compensation act.
- c. The vocational rehabilitation program is optional with respects to eligible employees. Employers or employees can request an eligibility evaluation.
- d. An employee is eligible for vocational rehabilitation if a doctor finds permanent physical capacities less than the physical demands of the employee's job.
- e. An employee is not eligible for vocational rehabilitation if the employer offers a job within the employee's predicted post-injury capacities at a wage equivalent to 60 percent of the former hourly wage and this job prepares the employee to be employable in other jobs in the labor market. In addition, employees are not eligible if they have been previously injured and rehabilitated to a similar occupation in terms of physical demands.
- f. The employer and employee must agree upon a rehabilitation specialist or one will be selected by the administrator. The employer and employee are to agree upon a reemployment plan or one will be selected by the administrator.

- g. Non-cooperation on the part of the employee in a rehabilitation plan shall result in a termination of the reemployment benefits.
- h. Time constraints are enacted regarding the election of the eligibility evaluation (60 days from injury), the determination of eligibility (30 days from request), selection of a specialist (10 days from determination of eligibility) and approval of the plan (90 days from determination of eligibility).
- i. The cost of the reemployment plan may not exceed \$10,000 and may not exceed two years. Temporary total benefits are to be paid until the employee is medically stationary. After medical stability, permanent impairment benefits are to be paid at the temporary total rate during the continuance of the plan. If the plan is completed prior to the exhaustion of the permanent impairment benefits, the remainder is to be paid in a lump sum. If permanent impairment benefits are exhausted prior to the completion of the plan additional weekly benefits are to be paid. Such additional benefits are to be equal to 80 percent of the employee's spendable wage not to exceed \$525. The costs of the reemployment specialist are in addition to the costs of the plan. All vocational rehabilitation expenses are to be paid by the employer.

3. BENEFIT FORMULA CHANGES

- a. The maximum weekly benefit is reduced from the current \$1108 to \$700. The minimum weekly benefit remains at \$110. However, if the employee can document his wages, the minimum is increased to 100% of the spendable wages or \$154, whichever is less. The benefit formula works as follows:

<u>Spendable Wage</u>	<u>Benefit</u>
Less than \$110	\$110 or 100% spendable
\$110 to \$154	100% spendable wage
\$154 to \$192.50	\$154
\$192.50 to \$575	80% spendable wage
over \$575	\$700

- b. Temporary disability is to stop at the earlier of medical stability or two years, whichever is earlier. Current law has no limit, but temporary disability is stopped upon release to employment.

- c. Permanent partial benefits are to be based upon the impairment to the whole man based upon the AMA guides. The amount is to be paid in a lump sum and is calculated as \$240,000 x %impairment x conversion factor. The conversion factors are based upon the % impairment as follows:

<u>% impairment</u>	<u>conversion factor</u>
0-5	0.0
6-10	0.2
11-15	0.4
16-20	0.5
21-25	0.7
26-30	0.8
over 31	1.0

- d. Clarifies the rules used by the board for determination of the employee's wages for benefit computation.
- e. Allows employer's contributions to a pension or profit sharing plan during the two preceding years to be included as wages to the extent of the employee's vested interest. This section modified existing case law in Ragland v. Morrison-Knudsen Co., Inc., 724 P.2d 575 (Alaska 1986).

#### 4. DEFINITIONAL CHANGES

- a. The point of "medical stability" is defined as the point where further objectively measurable improvement is not expected. Medical stability is presumed in the absence of objectively measurable improvement for a period of 45 days; such presumption may be rebutted by clear and convincing evidence.
- b. The definition of "injury" is modified to exclude mental injury caused by mental stress (with certain exceptions).

#### 5. CHANGES TO MEDICAL

- a. Medical payments may not exceed usual, customary, and reasonable fees as determined by the Board.
- b. Employee choice of physician is maintained, but the employee may not make more than one change (excluding referrals) without the employer's written consent.

- c. Courses of multiple treatments must be made in accordance with a written plan that is mailed to the employer within the first week of treatment. The initial treatment plan may not include more than 20 visits in the first 60 days. Documented need is required of the physician for plans exceeding these specifications.
- d. Employer's medical examinations of employees within the first 14 days and every 30 days thereafter are presumed to be reasonable.
- e. In the event of a medical dispute between the employee's attending physician and the employer's independent medical evaluation, a second independent medical exam will be performed by a physician selected from a panel by the Board. This second evaluation will be presumed to be correct in the absence of clear and convincing objective evidence to the contrary.

#### 5. OTHER

- a. The statute of limitations is clarified to exclude medical payments as "compensation" in determining the two year limit from last payment.
- b. Exclude workers compensation claims where the employee makes false statements regarding physical condition on the employment application, where the employer relied upon the false information, and where there is a causal relationship between the injury and the false representation.
- c. The most recent employer is to pay temporary disability benefits where there is a dispute as to which employer is responsible.