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er perspective by comparing this statute with statutes that have been found to penalize the right to travel. The United States Supreme Court has invalidated statutes challenged under the federal equal protection clause because they penalized the right to travel in only three cases, *Memorial Hospital v. Maricopa County*, 415 U.S. 250, 94 S.Ct. 1076, 39 L.Ed.2d 306 (1974), *Dunn v. Blumstein*, 405 U.S. 330, 92 S.Ct. 995, 31 L.Ed.2d 274 (1972), and *Shapiro v. Thompson*, 394 U.S. 618, 89 S.Ct. 1322, 22 L.Ed.2d 600 (1969). The classifications in these cases differ from section 175(d) in several respects.

First, in all three cases, the classifications denied either a "basic necessity of life" (*Maricopa County* (nonemergency health care) and *Shapiro* (welfare benefits)) or a "fundamental political right" (*Dunn* (voting)). In this case, the classification denies neither a basic necessity of life nor a fundamental political right. Furthermore, the statute does not *deny* workers' compensation benefits, but at most only *reduces* the amount received. Even with the reduction, Brown received about $11,000 per year, which is $3,000 *more* than the maximum amount available under the California workers' compensation system.

The second distinction is that *Maricopa County*, *Dunn*, and *Shapiro* all involved durational residency requirements, i.e., whether a state may deny certain benefits or privileges to new residents which are enjoyed by its "old" residents, until they have been residents for a specified period. Section 175(d) does not impose any durational requirement, nor is it even a "residency requirement" in the usual sense of the phrase.[1] Even if it were, a state generally is much more able to distinguish between residents and non-residents than between long and short term residents. *Williams v. Zobel*, 619 P.2d 448, 451 n. 7 (1980), *rev'd on other grounds*, 457 U.S. 55, 102 S.Ct. 2309, 72 L.Ed.2d 672 (1982), *citing Vlandis v. Kline*, 412 U.S. 441, 93 S.Ct. 2230, 37 L.Ed.2d 63; *Fisher v. Reiser*, 610 F.2d 629 (9th Cir.1979).

The Nevada statute challenged in *Fisher v. Reiser* is similar to section 175(d). The statute granted cost of living increases to workers' compensation recipients who resided in Nevada, but not to those who were no longer Nevada residents. The court noted that "[i]n *Shapiro*, *Dunn*, and *Maricopa County*, the issue involved the obligation and responsibility of the claimant's new state of residence; here the claimants seek to enforce an obligation against the state of former residence. The distinction is critical." 610 F.2d at 633. In support of its conclusion that the obligation to new residents imposed under *Shapiro* and *Maricopa County* does not automatically extend to former residents, the court in *Fisher* cited to *Califano v. Torres*, 435 U.S. 1, 98 S.Ct. 906, 55 L.Ed.2d 65 (1978) In that case, the Supplemental Security Income Act provided SSI benefits only while the claimant resided in a state or the District of Columbia. Torres lost his benefits upon moving to Puerto Rico. The Court stated:

> As the Court said in Memorial Hospital, "the right of interstate travel must be seen as insuring new residents the same right to vital governmental benefits and privileges in the States to which they migrate as are enjoyed by other residents." [*Memorial Hospital v. Maricopa County*, 415 U.S. at 261 [94 S.Ct. at 1084], 39 L.Ed.2d at 317.]

In the present cases the District Court altogether transposed that proposition. It held that the Constitution requires that a person who travels to Puerto Rico must be given benefits superior to those enjoyed by other residents of Puerto

1. 8 AAC 45.900(b) provides:
> In AS 23.30.175, "resides" means abides, dwells, inhabits, or lives. In applying the term to the facts of a specific case, the inquiry will be directed largely toward determining with what jurisdiction's economy the employee must contend.

Therefore, "residence" does not mean "domicile" (presence plus intent to remain); the benefits of recipients domiciled outside of Alaska but living in Alaska are not reduced, whereas the benefits of recipients who are domiciled in Alaska but living outside of Alaska are reduced.

> Rico if the newcomer enjoyed those benefits in the State from which he came. This Court has never held that the constitutional right to travel embraces any such doctrine, and we decline to do so now.

435 U.S. at 4, 98 S.Ct. at 908, 55 L.Ed.2d at 68–69 (footnote omitted).

Although the courts in *Fisher* and *Torres* applied the federal equal protection test, I believe they are persuasive in pointing out that there is no constitutional right for benefits received in one state to continue after the person has left that state. As the State notes in its brief, "a state certainly need not encourage injured workers to leave the state for destinations where they can live more inexpensively and continue to collect Alaska compensation benefits that are higher than the wages they would earn if working. Nor should Alaskan consumers, who ultimately bear the cost of the premiums, be burdened with financing these excesses." In my opinion, the statute does not penalize Brown's right to travel. Rather, it attempts to prevent him from receiving an economic windfall when he moves to a state with a lower cost of living.

Second, I object to the court's rejection of the state's objective of fostering rehabilitation by adjusting benefits when convalescence occurs outside of Alaska. It cannot be disputed that a major goal of the workers' compensation system in general is the rapid rehabilitation of an injured worker so that he or she can return to work. *See* 1 A. Larson, The Law of Workmen's Compensation § 2.50, at 11–12 (1982). One reason most states award an injured worker only a percentage of his wages is because excessive benefits may hamper the incentive to return to work, and encourage him to malinger. Given that Alaska benefits are based on Alaskan wages, which are higher than wages in most states, receiving these benefits in other states would frustrate the rehabilitation goal because it would be more profitable to receive benefits than to work. Adjusting the wages so that they are closer to the wages in the state of residence removes or lessens the incentive to malinger.

It is true, as the court's opinion notes, that just because an injured worker convalesces in a certain state does not mean he will work in that state after recovery. 687 P.2d at 273, n. 14. It is equally presumptuous, however, to assume that the worker will return to Alaska and find another high-paying job after he is rehabilitated. If an injured worker were allowed to receive the full two-thirds of his pre-injury salary (up to $49,000 per year) while living in a state with a much lower cost of living, I suspect that his incentive to work in any state, including Alaska, would be greatly diminished. By adjusting the benefit levels to more accurately reflect the economic conditions of the state of convalescence, the injured worker's incentive to return to work, no matter where that is, will be enhanced. Thus, section 175(d) substantially furthers the legitimate goal of rehabilitation, and on this ground, the statute should be upheld.

The superior court agreed that section 175(d) furthers this objective, but invalidated the statute on the ground that the objective could have been accomplished by using a less restrictive alternative to the chosen means. Rather than adjusting benefits based on average weekly wage data, the superior court believed that using the cost of living data would have accomplished the same objective more accurately. The court stated:

> In the Fall of 1973, the average annual cost of living for a four member family in Anchorage with an intermediate budget was $16,520, compared to a national urban average for such a family of $12,626. Thus, the national urban average cost of living was 76% of the Anchorage cost, a reduction of 24%. In 1974, the published average weekly wage for Alaska was $248.09, compared to an average weekly wage outside Alaska of $162.93. Thus, the average weekly wage outside Alaska was only 66% of the Alaskan average, a reduction of 34%.

The court concluded that this ten percent difference between the two formulas causes a "severe reduction in the purchasing power, in real terms, of the monetary benefits paid to disabled non-residents," but not to Alaska residents, and therefore injured workers are deterred from residing in another state.

In my opinion, it was error for the superior court to invalidate section 175(d) on this ground. First, cost of living statistics do not provide a workable alternative to average weekly wage statistics. Cost of living statistics are based on hypothetical family budgets for only twenty-eight urban areas and thus cannot accurately determine the actual cost of living in the area in which the injured worker convalesces. A more practical problem with using cost of living statistics is that they have been discontinued.[2]

Second, although using average weekly wage data is an imperfect measure of cost of living differentials, a perfect fit between means and ends is not required. Requiring compulsively neat logical correlations between classification and objective would ignore legitimate demands for legislative flexibility. Gunther, *Forward: In Search of Evolving Doctrine on a Changing Court: A Model for a Newer Equal Protection*, 86 Harv.L.Rev. 1, 21 (1972). *See also Rose v. Commercial Fisheries Entry Commission*, 647 P.2d 154, 159–60 (Alaska 1982); *Commercial Fisheries Entry Commission v. Apokedak*, 606 P.2d 1255, 1267 (Alaska 1980).

Although the adjustment is not perfect, I believe that section 175(d) is an acceptable attempt to meet acknowledged differences in the economic conditions of Alaska and other states. The equal protection clause requires that all individuals, similarly situated, be treated alike. As the State asserts:

> Rather than taking identically-situated individuals, and treating them dissimilarly, AS 23.30.175(d) has the opposite effect; that is, the benefits of individuals who *should* receive comparable compensation, but absent the statute, would not, because of the disparate wage levels and living costs of their places of residence, are adjusted to account for those circumstances.

If there were no statutory adjustment, recipients who remain in Alaska would be placed at a disadvantage when compared to those recipients because the cost of living is twenty four percent higher in Alaska than the national urban average.

In sum, the distinction between residence and non-residence is really a distinction between the economic conditions with which benefit recipients must contend, and is a rough attempt by the state to be neutral to recipients living in and outside of Alaska. This attempt seems to be the most fair and workable alternative. One could imagine a harsher alternative. For example, a statute that requires all benefits to be allocated only on the basis of the state of continued residence, rather than on the state of injury; under section 175(d)'s formula, Alaska's higher wages are always factored into the ratio and therefore an injured worker would always receive more under section 175(d) than under this hypothetical statute.[3] In this sense, he is always "rewarded" for his initiative to migrate to Alaska. When viewed from this angle, and considering how dissimilar this classification is from other classifications that have been invalidated under the Alaska and federal

2. The Autumn 1981 Urban Family Budget, released April 16, 1982, by the United States Department of Labor, Bureau of Labor Statistics, states:

> This is the last release of four-person family budget data. The Bureau of Labor Statistics eliminated the program as part of the recent budget reduction. The expenditure data on which the budgets are based are now 20 years old. Continuation of the program would have required revision of concepts and expenditure data and extensive price collection, for which funding was not available.

3. For example, under the hypothetical statute, the maximum amount Brown would receive is $154.00 per week (using the California rates); the amount he received under section 175(d) was $211.91 per week.

equal protection clauses, I would hold that this statute is constitutional.

RESOURCE INVESTMENTS, a joint venture composed of Harold J. Moening, David G. Fritz, Bruce G. Purcell, Albert A. Kelly and Harvey P. Pittelko, Appellants,

v.

STATE of Alaska, DEPARTMENT OF TRANSPORTATION & PUBLIC FACILITIES, Appellee.

No. 7229.

Supreme Court of Alaska.

July 27, 1984.

In eminent domain action, the Superior Court, Third Judicial District, Anchorage, Karl S. Johnstone, J., granted State's motion for partial summary judgment, holding that State already had 100-foot-wide right-of-way along highway, awarded amount to property owner greater than ten percent total amount deposited by State, and awarded property owner $115,000 attorney fees and $76,877.13 for costs, and property owner appealed. The Supreme Court, Matthews, J., held that: (1) original patentee's entry on land was valid existing right, and therefore, no part of homestead was affected by public land order which withdrew 100 feet of land for highway purposes; (2) trial court's failure to award entire attorney fees requested was not abuse of discretion; and (3) property owner was entitled to recover costs for trips by its soil expert, expert architect, and appraiser.

Reversed and remanded.

1. Public Lands ⇐135(1)

Original patentee's homestead entry of property was "valid existing right" within meaning of Secretary of Interior's public land order withdrawing for highway purposes 100 feet on each side of centerline of highway; thus, State did not own 100-foot-wide right-of-way.

2. Eminent Domain ⇐265(3)

Although full attorney fees are norm under rule entitling property owner to award of costs and attorney fees where award obtained is more than ten percent larger than amount deposited by state, attorney fees must be both reasonable and necessarily incurred to achieve just and adequate compensation for owner. Rules Civ.Proc., Rule 72(k).

3. Eminent Domain ⇐262(1)

Court of Appeals will not disturb trial court's decision to award less than property owner's actual costs or fees in eminent domain case unless it appears that court's decision is abuse of discretion.

4. Eminent Domain ⇐265(1)

When trial court decides not to award full attorney fees and costs in eminent domain case where award obtained is more than ten percent larger than amount deposited by state, trial court must state its reasons. Rules Civ.Proc., Rule 72(k).

5. Eminent Domain ⇐265(3)

Trial court's refusal to award full amount of attorney fees requested in eminent domain action in which award obtained was more than ten percent larger than amount deposited by State was not abuse of discretion, where trial court's stated reasons for failure to grant full award were that there was unnecessary utilization of two and sometimes three attorneys at trial and pretrial proceedings at which presence of one attorney would have sufficed, time spent was excessive in view of straightforward nature of issues to be tried, claim of $17,887.55 in attorney fees for preparing motions for costs and attorney fees was not only excessive in itself but suggested excessiveness as to all other fees, and one attorney's billings for travel

STATE OF ALASKA
THE LEGISLATURE

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LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M February 16, 1988

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

TO: Senator Tim Kelly
Chairman
Senate Labor & Commerce Committee

FROM: Michael F. Ford MF
Legislative Counsel

In section 22 of the draft CS, the benefits payable to an out-of-state recipient are adjusted by multiplying the recipient's weekly rate of compensation by the ratio obtained by comparing the cost of living of the state in which the recipient resides to Alaska's cost of living. This provision is an effort to adjust benefits paid to out-of-state recipients, in light of the Alaska Supreme Court's rejection of the method of adjusting benefits received by out-of-state recipients in existing law, AS 23.30.175(c).

In Alaska Pacific Assurance Company v. Brown, 687 P.2d 264 (Alaska 1984), the court struck down the method used to adjust workers' compensation benefits paid to out-of-state recipients, holding that the statute violated the state equal protection clause. The court found that the adjustment of benefits penalized the individuals' right to travel, but noted that arguments in favor of the benefit adjustment would be more persuasive if "the adjustment calculations were based upon reasonably accurate cost of living statistics from other states rather than upon wage levels in those states." Brown at 274. The draft CS incorporates this suggestion in sec. 22 and bases the benefit adjustment on cost of living indexes in Alaska and the state of residence.

It is not clear from the Brown decision whether the approach taken in sec. 22 will survive constitutional challenge. Although the court seems to hint that this approach is more

acceptable, it remains to be seen if in fact the state can constitutionally distinguish between in-state and out-of-state benefits in this manner. I have attached a copy of the Brown decision for your review.

Please contact me if you have further questions.

Attachment

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wkb2/100

ALASKA PACIFIC ASSURANCE COMPANY and State of Alaska, Appellants,

v.

Robert BROWN, Individually and as Class Representative, Appellee.

Nos. 6600, 6626.

Supreme Court of Alaska.

Feb. 17, 1984.

Rehearing Granted in Part and Denied in Part July 20, 1984.

As Modified July 20, 1984.

Workers' compensation recipient who had moved out of Alaska filed class action against insurer alleging that statute adjusting benefits of workers' compensation recipients who move out of state was unconstitutional, requesting monetary damages as well as declaratory and injunctive relief. The Superior Court, Third Judicial District, Anchorage, Milton M. Souter, J., declared statute unconstitutional and awarded class members monetary damages. On appeal, the Supreme Court, Rabinowitz, J., held that: (1) statute reducing benefits for recipients who move out of state imposes substantial penalty upon exercise by recipients of right to travel out of state; (2) state failed to meet its high burden of justifying penalty on interstate travel imposed by statute, and thus, statute, and 1982 and 1983 amendments which did not materially alter relevant provisions, are invalid under the state equal protection clause; and (3) insurer, which in good faith reduced benefits paid to recipients who had moved out of state pursuant to statute would not be assessed damages for complying with such statute upon determination that statute was unconstitutional.

Affirmed in part and reversed in part.

Compton, J., filed dissenting opinion.

1. Constitutional Law ⇐213.1(1)

Initial inquiry under the state equal protection clause is determination of what weight should be afforded constitutional interest impaired by challenged enactment, which is the most important variable in fixing appropriate level of review, and thus, goes to level of scrutiny. Const. Art. 1, § 1.

2. Constitutional Law ⇐213.1(1)

Depending upon the primacy of constitutional interest impaired by challenged enactment, state will have a greater or lesser burden under the state equal protection clause in justifying its legislation. Const. Art. 1, § 1.

3. Constitutional Law ⇐213.1(2)

Second step of analysis under the state equal protection clause is an examination of purposes served by challenged statutes; depending on level of review determined, state may be required to show only that its objectives were legitimate, at the low end of the continuum, or at the high end of the scale, that legislation was motivated by a compelling state interest. Const. Art. 1, § 1.

4. Constitutional Law ⇐213.1(2)

Under the state equal protection clause, an evaluation of state's interest in the particular means employed to further its goals must be undertaken, with state's burden differing in accordance with determination of level of scrutiny afforded constitutional interest impaired; at low end of the "sliding scale," a substantial relationship between means and ends is constitutionally adequate, while at higher end of scale, classification will be invalidated if purpose can be accomplished by a less restrictive alternative. Const. Art. 1, § 1.

5. Constitutional Law ⇐213.1(1)

First inquiry in analyzing challenged enactment under state equal protection clause goes to level of scrutiny, to be determined by importance of individual rights asserted and by degree of suspicion with which Supreme Court views resulting classification scheme. Const. Art. 1, § 1.

6. Workers' Compensation ⇐26

For purpose of determining level of inquiry to be used in determining validity of statute adjusting benefits of workers' compensation recipients who move out of state under the state equal protection clause, statute might be viewed as blanket "change in condition" adjustment for workers who move out of state; worker does not have inherent right to benefits set in disregard of his or her economic environment. AS 23.30.175(c, d); Const. Art. 1, § 1.

7. Constitutional Law ⇐245(4)
Workers' Compensation ⇐26

Right of nonresident workers' compensation recipients who fall under statute adjusting benefits of recipients who have moved out of state to have their benefits determined in relation to same factors that are applied to workers' compensation recipients in general is not itself an individual right appropriate for standard criteria selection under the state equal protection clause; it is merely a particularized expression of the right to equal treatment of those similarly situated, the general principle underlying the equal protection clause. AS 23.30.175(c, d); Const. Art. 1, § 1.

8. Constitutional Law ⇐83(1)

Right of interstate migration is part of State Constitution.

9. Constitutional Law ⇐83(1)

Suspicion with which Supreme Court will view infringements upon right to travel depends upon degree to which challenged law can be said to penalize exercise of right, which in turn depends upon objective degree to which challenged legislation tends to deter interstate travel. Const. Art. 1, § 1.

10. Constitutional Law ⇐225.1

In analyzing statute which tends to deter interstate migration under either state or federal equal protection clauses, there is no requirement to demonstrate actual deterrence of right to travel; relevant criteria are the fact and the severity of the restriction. U.S.C.A. Const. Amend. 14; Const. Art. 1, § 1.

11. Constitutional Law ⇐245(4)
Workers' Compensation ⇐26

State's asserted goal of lowering insurance premiums in enacting statute adjusting benefits of workers' compensation recipients who move out of state can have no independent force in state's attempt to meet its burden of justifying statute under the equal protection clause; although reducing costs to taxpayers or consumers is a legitimate government goal in one sense, savings will always be achieved by excluding class of persons from benefits they would otherwise receive and is justifiable only when effected through independently legitimate distinctions. AS 23.30.175(c, d); Const. Art. 1, § 1.

12. Constitutional Law ⇐245(4)
Workers' Compensation ⇐26

For equal protection purposes, statute adjusting benefits of workers' compensation recipients who move out of state based on average weekly wage of state into which recipient moves advances important state interests in avoiding disincentives to rehabilitation and in creating incentives for insured workers to go back to work, the effectiveness of which incentives may depend on cost of living in state in which worker lives, since worker's unadjusted compensation benefits may in terms of real income be in excess of actual wage he or she received when employed if injured worker is able to live in an area where general cost of living is much lower than in state in which he worked. AS 23.30.175(c, d); Const. Art. 1, § 1.

13. Constitutional Law ⇐213.1(2)

Under state equal protection analysis, the Supreme Court examines "the closeness of the means-to-ends fit" between legislation and its purported goals. Const. Art. 1, § 1.

14. Constitutional Law ⇐245(4)

Under the equal protection clause, when examining impact of statute adjusting benefits of workers' compensation re-

cipients who moved out of state on right of interstate migration, relevant questions are whether statute operates in such a way that reasonable recipient would be deterred from exercising right to travel, and degree of such deterrence. AS 23.30.175(c, d); Const. Art. 1, § 1.

15. Constitutional Law ⇐83(1)

Statute adjusting benefits of workers' compensation recipients who move out of state based on average weekly wage of state to which recipient moves imposes a substantial penalty upon exercise by recipients of right to travel out of state; accordingly, burden on state to justify legislation is a very high one. AS 23.30.175(c, d); Const. Art. 1, § 1.

16. Constitutional Law ⇐83(1)
Workers' Compensation ⇐26

State failed to meet its burden of justifying burden imposed on interstate travel by statute adjusting benefits for workers' compensation recipients who moved out of state based on average weekly wage in state to which recipient moved, and 1982 and 1983 amendments to such statute which did not materially alter relevant provisions, since there would not necessarily be any correlation between wages and cost of living and statute would always carry with it the risk that adjustment it effected would overcompensate for any cost of living differential that existed between Alaska and other states; therefore, statute was invalid under the state equal protection clause. AS 23.30.175(c, d); Const. Art. 1, § 1.

17. Civil Rights ⇐13.5(1)

Most of rights secured by Constitution are protected only against governmental infringement.

18. Civil Rights ⇐13.4(1)

Private entities who regulate their behavior in good-faith compliance with a validly enacted law cannot by fact of that compliance be held legally responsible for constitutional defects in the law.

19. Civil Rights ⇐13.17(3)

Workers' compensation insurer which in good faith reduced payments, pursuant to statute, to recipients who had moved out of state, would not be assessed damages for additional benefits such recipients would have received if statute requiring such adjustments had not been enacted upon determination that statute was unconstitutional. AS 23.30.175(c, d); Const. Art. 1, § 1.

Robert Draper, O'Melveny & Myers, Los Angeles, Cal., and Randall J. Weddle, Faulkner, Banfield, Doogan & Holmes, Anchorage, for appellant Alaska Pacific Assur. Co.

Linda Scoccia, Asst. Atty. Gen., Wilson L. Condon, Atty. Gen., Juneau, for appellant State of Alaska.

Patrick B. Gilmore and Jerome H. Juday, Atkinson, Conway, Bell & Gagnon, Anchorage, and Herbert Colden, Los Angeles, Cal., for appellee.

Before BURKE, C.J., RABINOWITZ, MATTHEWS and COMPTON, JJ., and DIMOND, Senior Justice.*

OPINION

RABINOWITZ, Justice.

This appeal involves the constitutionality of former AS 23.30.175(d), which adjusted the benefits of Alaska workers' compensation recipients who had moved out of state. AS 23.30.175(d) provided:

> For a recipient who resides in a state other than Alaska, the weekly rate of compensation shall be the weekly grant he would have received if he resided in Alaska times the ratio of the average weekly wage of the state in which he resides and the average weekly wage of Alaska. For the purposes of this chap-

* Dimond, Senior Justice, sitting by assignment made pursuant to article IV, section 11 of the Constitution of Alaska.

ter, absence from Alaska for a continuous period of more than 90 days creates a rebuttable presumption of nonresidential status; however, this presumption does not arise if the absence from Alaska is for medical or rehabilitation services.[1]

1. This provision was amended in 1982 along with the whole of AS 23.30.175. 1982 Alaska Sess.Laws, chap. 93, §§ 16–18, 27. Former section 175(d), the substance of which survives for purposes of this appeal, was reclassified as section 175(c). For convenience we will speak only of section 175(d) in this opinion, with the understanding that both the old and new versions are included in this reference. Former AS 23.30.175 read in its entirety as follows:

Rates of compensation. (a) The weekly rate of compensation for disability or death for a recipient residing in Alaska may not exceed the percentage of the Alaska average weekly wage in effect on the date of injury as determined by the table contained in this subsection and initially may not be less than $65 a week. However, if the board determines that the employee's average weekly wages are less than $65 a week as computed under AS 23.30.220, it shall issue an order decreasing the compensation to a rate equal to the employee's average weekly wages, and payments made earlier in excess of the decreased rate shall be deducted from the unpaid compensation in the manner the board determines. In any case, the employer shall pay timely compensation.

On	The Rate Shall Be
July 2, 1975	80 per cent of the Alaska average weekly wage
January 1, 1976	100 per cent of the Alaska average weekly wage
January 1, 1977	133.3 per cent of the Alaska average weekly wage
January 1, 1979	166.6 per cent of the Alaska average weekly wage
January 1, 1981	200 per cent of the Alaska average weekly wage

(b) As soon as practicable after June 30 of each year, and before December 15 of each year, the commissioner shall determine the Alaska average weekly wage for the three consecutive calendar quarters ending June 30. This determination is the applicable Alaska average weekly wage for the annual period beginning with January 1 of the next year and ending December 31. The initial determination under this subsection shall be made as soon as practicable after May 22, 1975. The average weekly wage calculation for Alaska shall be based on the wages of all employees in the state, both public and private, who are covered by this chapter.

(c) For the purposes of determining the average weekly wage of a state other than Alaska, the commissioner shall adopt the average weekly wage as computed and published by the state agency responsible for administering the workers' compensation laws of that state. For those states in which no such figure is published, the commissioner shall adopt the average weekly wage for that state as published by the United States Secretary of Labor for the purposes of the Longshoremen's and Harbor Workers' Compensation Act (P.L. 69–803; 44 Stat. 1424; 33 U.S.C. 901 et seq.). The average weekly wage as calculated for all states shall be made available to the public.

(d) For a recipient who resides in a state other than Alaska, the weekly rate of compensation shall be the weekly grant he would have received if he resided in Alaska times the ratio of the average weekly wage of the state in which he resides and the average weekly wage of Alaska. For the purposes of this chapter, absence from Alaska for a continuous period of more than 90 days creates a rebuttable presumption of nonresidential status; however, this presumption does not arise if the absence from Alaska is for medical or rehabilitation services.

(e) For a recipient who resides in a jurisdiction other than a state as defined in (f) of this section, the weekly rate of compensation shall be the weekly grant he would have received if he resided in Alaska times the ratio of the average weekly wage of the jurisdiction in which he resides, as determined by the commissioner, and the average weekly wage of Alaska.

(f) In this section "state" means a state of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands.

In 1982 and 1983 the statute was amended in several respects. The current version of AS 23.30.175 provides:

Rates of compensation. (a) The weekly rate of compensation for disability or death for a recipient residing in Alaska may not exceed the percentage of the Alaska average weekly wage in effect on the date of injury as determined by the table contained in this subsection and initially may not be less than $110 a week. However, if the board determines that the employee's spendable weekly wages are less than $110 a week as computed under AS 23.30.220, it shall issue an order decreasing the weekly rate of compensation to a rate equal to the employee's spendable weekly wages, and payments made earlier in excess of the decreased rate shall be deducted from the unpaid compensation in the manner the board determines. In any case, the employer shall pay timely compensation.

On	The Rate Shall Be
July 2, 1975	80 per cent of the Alaska average weekly wage
January 1, 1976	100 per cent of the Alaska average weekly wage

On January 22, 1977, Robert Brown injured his left ankle and leg while employed as an electrical foreman during construction of the Trans-Alaska Pipeline. He received temporary disability benefits under the Alaska Workers' Compensation Act. After the injury, Brown returned to his home in California, and his benefits were adjusted under AS 23.30.175(d). If Brown had remained in Alaska, he would have received $551.86 per week. Under the adjustment provision, however, his benefits were reduced to $211.91 per week.

In June 1979, Brown filed a class action complaint against the Alaska Pacific Assurance Company (ALPAC), the insurance carrier for Brown's employer. Brown alleged that section 175(d) violated federal and state equal protection and due process guarantees, and the privileges and immunities and commerce clauses of the federal Constitution, and requested monetary damages as well as declaratory and injunctive relief.[2] Brown thereafter filed a motion for partial summary judgment, requesting that section 175(d) be declared unconstitutional and that the plaintiffs be awarded damages and injunctive relief. ALPAC and the State both filed cross-motions for partial summary judgment, requesting that section 175(d) be declared constitutional. ALPAC also requested that if the superior court invalidated the statute it not give retroactive effect to its ruling and thus deny any claims for damages.

The superior court declared AS 23.30.175(c)–(f) unconstitutional under Alaska's equal protection clause.[3] The court reject-

On	The Rate Shall Be
January 1, 1977	133.3 per cent of the Alaska average weekly wage
January 1, 1979	166.6 per cent of the Alaska average weekly wage
January 1, 1981	200 per cent of the Alaska average weekly wage

(b) After June 30 and before December 1 of each year, the commissioner shall adopt and publish the average weekly wage for each jurisdiction for the preceding calendar year as published by the United States Secretary of Labor for the purposes of unemployment insurance. In determining the rate of compensation the commissioner shall use the average weekly wage figure for each jurisdiction, including Alaska, for which the Secretary of Labor computes an average weekly wage. These figures are the applicable average weekly wages for those jurisdictions for the following calendar year.

(c) The following rules apply to recipients who do not reside in Alaska:

(1) The weekly rate of compensation shall be calculated by multiplying the recipient's weekly compensation rate calculated in accordance with AS 23.30.180, 23.30.185, 23.30.190, 23.30.200, or 23.30.215 times the ratio of the average weekly wage of the jurisdiction in which the recipient resides to the average weekly wage of Alaska. The ratio is based on the average weekly wages in effect when the recipient leaves Alaska and shall be adjusted annually upon publication of the average weekly wages for all jurisdictions.

(2) The calculation required by this subsection does not apply if the recipient is absent from Alaska for medical or rehabilitation services not reasonably available in Alaska.

(3) If the spendable weekly wage of the recipient and the resulting compensation rate is determined under AS 23.30.220(a)(1), the calculation required by this subsection applies to only those wages earned in Alaska.

(4) Application of this subsection may not result in a reduction of the weekly compensation rate to less than $110 a week except as provided in (a) of this section.

(d) In a jurisdiction for which no average weekly wage is computed by the United States Secretary of Labor for the purposes of unemployment insurance, the average weekly wage shall be as determined by the commissioner.

Both current and former AS 23.30.175 must be considered since Brown seeks retroactive and prospective relief. For the purposes of our analysis we do not view the new section 175 as substantially different from its predecessor. It is true that the statute's operation has changed in several respects. Differences in the old and new version will be examined as they become relevant to our discussion.

2. The state intervened in September 1979. Under Alaska R.Civ.P. 24(c), the state may intervene in any action "[w]hen the constitutionality of a state statute affecting the public interest is drawn in question."

3. The superior court applied the three-part state equal protection formula set forth in *State v. Erickson*, 574 P.2d 1, 12 (Alaska 1978). The court found that the statute served the legitimate state purposes of reducing workers' compensation insurance premiums for Alaska employers and eliminating disincentives for non-resident recipients to return to work. The court also found that the statute substantially furthered its intended purposes. The court reasoned that "[u]nquestionably the reduction of the amounts paid to the many non-resident recipients of disability benefits will reduce the

ed ALPAC's contention that its decision should only be applied prospectively under the test set forth in *Plumley v. Hale*, 594 P.2d 497 (Alaska 1979). Class members were awarded damages in the amount of benefits they would have received if AS 23.30.175 had never been enacted.[4] We affirm that portion of the superior court's decision striking down the adjustment provision but reverse with respect to ALPAC's liability for damages.

I. STATE EQUAL PROTECTION

Alaska's own equal protection analysis was engendered in *Isakson v. Rickey*, 550 P.2d 359 (Alaska 1976), and *State v. Erickson*, 574 P.2d 1 (Alaska 1978).[5] *Erickson* articulated an adjustable "uniform-balancing" test which placed a greater or lesser burden on the state to justify a classification depending on the importance of the individual right involved. *Id.* at 12. In effect, *Erickson* created a continuum of available levels of scrutiny, beginning with the rational basis test described in *Isakson*, 550 P.2d at 362–63, and ending with the functional equivalent of the federal compelling state interest test at the highest level of review.

[1, 2] In *Erickson* we looked first to the legitimacy of the state purposes behind challenged legislation, second to the relationship between the chosen means and the asserted goals of the statute, and third to the state's interest in the means chosen as balanced against the nature of the constitutional right infringed. 574 P.2d at 12. Our recent opinion in *State v. Ostrosky*, 667 P.2d 1184 (Alaska 1983), formally revised the order of the analytic stages of *Erickson*. First, it must be determined at the outset what weight should be afforded the constitutional interest impaired by the challenged enactment. The nature of this interest is the most important variable in fixing the appropriate level of review. Thus, the initial inquiry under article I, section 1 of Alaska's constitution goes to the level of scrutiny. *Ostrosky*, 667 P.2d at 1192–93 & n. 14. Depending upon the primacy of the interest involved, the state will have a greater or lesser burden in justifying its legislation.

[3] Second, an examination must be undertaken of the purposes served by a challenged statute. Depending on the level of review determined, the state may be required to show only that its objectives were legitimate, at the low end of the continuum, or, at the high end of the scale, that the legislation was motivated by a compelling state interest.

[4] Third, an evaluation of the state's interest in the particular means employed to further its goals must be undertaken. Once again, the state's burden will differ in accordance with the determination of the level of scrutiny under the first stage of analysis. At the low end of the sliding scale, we have held that a substantial relationship between means and ends is consti-

total amount of insurance premiums to be paid and tend to persuade the recipients to return to work." Finally, the court weighed the state's interest in the means employed against "the extent to which the affected persons' constitutional rights may be impaired." At this stage of the *Erickson* test the court found AS 23.30.175 to be defective. First, the court concluded that the adjustment provision "caused a severe reduction in the purchasing power, in real terms, of the monetary benefits paid to disabled nonresidents." As a result of this reduction, the court concluded that "disabled workers are strongly deterred from exercising their constitutional right to travel and take up residence in another state." Further, the court suggested that "the Legislature, by simply utilizing relative cost of living statistics, could have achieved its twin goals without the substantial infringement of the right to travel which is entailed in the use of average weekly wage statistics."

4. The superior court awarded interest, and specified that no persons who had withdrawn from the class were to receive past benefits.

5. On appeal Brown invokes a host of constitutional theories in support of the result reached by the superior court. Because we conclude that the superior court was correct in ruling AS 23.30.175 unconstitutional under the state equal protection clause, we do not pass formal judgment on the other arguments raised. *Compare Carlson v. State*, 598 P.2d 969, 973 (Alaska 1979); *Davis v. Hallett*, 587 P.2d 1170, 1171 (Alaska 1978).

tutionally adequate. At the higher end of the scale, the fit between means and ends must be much closer. If the purpose can be accomplished by a less restrictive alternative, the classification will be invalidated.

[5] Thus, under *Ostrosky* our first inquiry goes to the level of scrutiny. This is "to be determined by the importance of the individual rights asserted and by the degree of suspicion with which we view the resulting classification scheme." 667 P.2d at 1192–93. Two areas of concern relevant to our inquiry are identifiable at this stage. First, Brown asserts a right to receive the full measure of workers' compensation benefits which he would receive but for the classification created by AS 23.30.175(d). Second, Brown asserts that his constitutional right to travel is directly burdened by the operation of the adjustment provision.

[6] No authority has been cited by Brown for the proposition that, as a matter of constitutional law, workers' compensation benefits must be set at any particular level. Although the rule of thumb often stated is that benefits should approximate two-thirds of the worker's salary at the time of injury,[6] this is hardly a constitutional mandate. It is no longer the rule in Alaska, which now attempts to pay an injured worker four-fifths of his or her "spendable weekly wage," and even this rule of thumb figure is subject to a fixed ceiling, so that some highly-paid workers receive only a small fraction of their former earnings in compensation benefits.[7] Further, Alaska benefits may be modified under AS 23.30.130 if a sufficient "change in conditions" is demonstrated to warrant either an increase or decrease in the original award.[8] AS 23.30.175(d) might be viewed as a blanket "change in condition" adjustment for workers who have moved out of state.[9] Even though the "change"

6. *See Wien Air Alaska v. Arant*, 592 P.2d 352, 360 (Alaska 1979), and the versions of AS 23.30.185, AS 23.30.190(a), and AS 23.30.200 in effect when Brown was injured. The House Committee Report accompanying amendments to the federal Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. § 901 et seq., states that, "The basic requirement of the Act is for the injured worker to receive 66⅔% of his average weekly wage." House Comm. on Education and Labor, Longshoremen's and Harbor Workers' Compensation Act Amendments of 1972, H.R. Rep. No. 92–1441, 92d Cong., 2d Sess., *reprinted in* 1972 U.S.Code Cong. & Ad.News 4698, 4700.

7. AS 23.30.175(a), *supra* note 1, creates an absolute ceiling for benefits of all classes based upon the current average wages in Alaska. For the concept of "spendable weekly wage" and the associated 80% rule, see AS 23.30.220 and the state statutes cited at note 6 *supra*.

Although actual pre-injury earnings are generally the measure of compensation, they are not always used. Where actual earnings are thought not to fairly represent wage-earning capacity the Board can make adjustments, as it can in special cases of apprentices and volunteer firemen. *See* AS 23.30.210, AS 23.30.220(a)(2), (3) and (4). Similar rules were in effect when Brown was injured.

8. AS 23.30.130(a) provides:

(a) Upon its own initiative, or upon the application of any party in interest on the ground of a change in conditions, including, for the purposes of AS 23.30.175, a change in residence, or because of a mistake in its determination of a fact, the board may, before one year after the date of the last payment of compensation, whether or not a compensation order has been issued, or before one year after the rejection of a claim, review a compensation case in accordance with the procedure prescribed in respect of claims in AS 23.30.100. In accordance with AS 23.30.110 the board may issue a new compensation order which terminates, continues, reinstates, increases, or decreases the compensation, or award compensation.

9. The bulk of "reopening" cases involve a claim by the worker that his or her disability has worsened and that his or her benefits should go up. A substantial portion of reopenings, however, are brought by employers or carriers who assert that the initial award overestimated the extent of the worker's disability, and that it is appropriate to reduce his or her benefits. Normally the debate centers upon the physical condition of the recipient. 3 A. Larson, The Law of Workmen's Compensation, § 81.31(a) at 15–553–554.18 (1993). As to whether economic changes may not also be considered, the small number of cases on point have split on the question. 3 Larson, § 81.31(e) at 15–554.41–554.42. *See Lerner v. Jakwall Embroidery Co.*, 203 A.D. 381, 196 N.Y.S. 736, 738 (1922) (rule allowing for compensation to be changed "as wages vary from time to time" would produce constant reopenings and administrative confusion); *McCormick S.S. Co. v. U.S. Employees' Compensation Comm'n*, 64 F.2d 84, 86 (9th Cir. 1933) (reopenings under the federal statute not

to which section 175(d) reacts is one in economic condition, we cannot say that a worker has an inherent right to benefits set in disregard of his or her economic environment.

[7] Brown's argument, however, is something different than this. The basis of his claim is not that section 175(d) adjusts benefits according to criteria which are impermissible per se. Rather, he asserts that non-resident workers who fall under section 175(d) are subject to criteria different than applied to non-section 175(d) recipients. Brown thus states the following interest for the purposes of equal protection analysis: the right of section 175(d) recipients to have their workers' compensation benefits determined in relation to the same factors that are applied to workers' compensation recipients in general. This, however, is merely a particularized expression of the right to equal treatment of those similarly situated, the general principle underlying our equal protection clause. It is not itself an individual right appropriate for standard criteria selection.

[8–10] AS 23.30.175(d) distinguishes recipients who remain in Alaska from those who move out of state. Thus, Brown asserts that section 175(d) imposes a direct penalty upon those recipients who choose to leave Alaska, and thereby burdens their right to travel. The right of interstate migration is a part of the Alaska Constitution. *Williams v. Zobel (Zobel II)*, 619 P.2d 448, 452 (Alaska 1980), *rev'd on other grounds*, 457 U.S. 55, 102 S.Ct. 2309, 72 L.Ed.2d 672 (1982). The suspicion with which this court will view infringements upon the right to travel depends upon the degree to which the challenged law can be said to penalize exercise of the right. *See id.* at 457–58; *Williams v. Zobel (Zobel I)*, 619 P.2d 422, 432–33 (Alaska 1980) (Rabinowitz, C.J., concurring).[10] This in turn depends upon the objective degree to which the challenged legislation tends to deter interstate migration.[11]

One central area of dispute in this case is whether section 175(d) has any adverse impact upon recipients affected. The state and ALPAC argue that there is no negative effect, and that section 175(d) is necessary to prevent workers who move out of state

warranted because of changed economic conditions).

10. Both the analysis and the terms of art within the context of Alaska's right to travel guarantee are different than in the federal law. Migration cases in the federal courts adopt the rigid two-tiered analysis characteristic of federal equal protection. In order for strict scrutiny to apply, it must be shown that the classification burdens "basic necessities of life" or some "fundamental political right." *Zobel I*, 619 P.2d at 426; *Memorial Hospital v. Maricopa County*, 415 U.S. 250, 259, 94 S.Ct. 1076, 1082, 39 L.Ed.2d 306, 315 (1974). If a lesser individual interest is implicated by the state's classification, the test of minimum rationality is employed. *Sosna v. Iowa*, 419 U.S. 393, 95 S.Ct. 553, 42 L.Ed.2d 532 (1975). In the federal courts, the right to travel is "penalized" only if a right sufficient to invoke the strict scrutiny test is impaired. *See Zobel II*, 619 P.2d at 454–55. Prior to *Zobel I* and *Zobel II* we viewed the right to travel as a fundamental right per se, and uniformly invoked the compelling state interest test in reviewing durational residence requirements. *State v. Wylie*, 516 P.2d 142, 147 (Alaska 1973); *see, e.g., Hicklin v. Orbeck*, 565 P.2d 159, 166 (Alaska 1977), *rev'd on other grounds*, 437 U.S. 518, 98 S.Ct. 2482, 57 L.Ed.2d 397 (1978); *Thomas v. Bailey*, 595 P.2d 1, 10 (Alaska 1979) (Rabinowitz, J., concurring). In *Zobel I* and *Zobel II*, however, we announced a new framework for the examination of migration rights under the state constitution. In *Zobel II* we stated:

> [W]e will no longer regard all durational residency requirements as automatically triggering strict scrutiny and requiring a showing that such a classification is absolutely necessary to promote a compelling state interest. Instead, we will balance the nature and extent of the infringement on this right caused by the classification against the state's purpose in enacting the statute and the fairness and substantiality of the relationship between that purpose and the classification.

619 P.2d at 453 (footnote omitted). Because in *Zobel II* we concluded that the right to migrate into Alaska was not penalized in any respect by the legislative scheme at issue, we applied the lowest level of review under *Erickson*. 619 P.2d at 458–60.

11. There is no requirement to demonstrate actual deterrence of the right to travel in state or federal law. *Zobel II*, 619 P.2d at 458 & n. 32. The relevant criteria are the fact and the severity of the restriction.

from reaping a "windfall" in real terms through the exportation of Alaska benefits to the respective economies of our sister states. The parties' contentions regarding whether the right to travel is burdened by § 175(d) and the extent of that burden are related both to the selection of the standard of review and the question of whether the statute is fairly designed to accomplish its purposes. We will therefore defer discussion of this point until a discussion of the statutory purposes.

A. *The Purposes Furthered by AS 23.30.175(d).*

According to appellants, two broad categories of purposes are served by the adjustment provision. First, AS 23.30.175(d) achieves a "reduction of the cost of insurance premiums" paid by Alaska employers. Second, it is designed to align benefit levels to the economic environment of the recipient. ALPAC and the State argue that this serves to eliminate distortions and discriminations which would otherwise occur, in contravention of fundamental premises of workers' compensation.

[11] We hold that the asserted goal of lowering insurance premiums can have no independent force in the state's attempt to meet its burden under the equal protection clause. Although reducing costs to taxpayers or consumers is a legitimate government goal in one sense, savings will always be achieved by excluding a class of persons from benefits they would otherwise receive. Such economizing is justifiable only when effected through independently legitimate distinctions.[12]

[12] The second goal proffered by the state and ALPAC is that AS 23.30.175(d) attempts to adjust benefit levels to the economic environment of recipients. The premise here is that a specified amount of money is worth something different in another state than it is in Alaska. Taking Brown's case as an example, the argument would be that the $212 weekly payment received by Brown in California has the same real value as the $552 he would have received in Alaska.

Appellants argue that adjustment to the wage levels in the recipient's locality is an important state goal for two reasons. First, they claim that Alaska-level benefits lose their relation to prospective earning capacity when a recipient moves to a different economic environment. According to ALPAC and the State, we are bound to recognize that a recipient's earning power varies with his place of residence.

Second, appellants point to a functional objective of disability compensation which would be frustrated if out-of-state recipients were allowed to receive benefits outstripping their geographically-determined earning power. The state argues that "[a]nother major goal of the workers' compensation system is the rehabilitation of the injured worker." Consistent with this goal, appellants assert that the state has a strong interest in ensuring that benefit levels are not so high for some recipients that they discourage the recipients from returning to work.[13]

We do not accept appellants' premise that earning power is exclusively determined by place of present residence. A

12. In *Plyler v. Doe*, 457 U.S. 202, 227, 102 S.Ct. 2382, 2400, 72 L.Ed.2d 786, 806 (1982), the Supreme Court stated that "a concern for the preservation of resources standing alone can hardly justify the classification used in allocating those resources." Earlier precedent held that fiscal considerations could not be used to explain invidious classifications. *Memorial Hospital v. Maricopa County*, 415 U.S. 250, 263, 94 S.Ct. 1076, 1084, 39 L.Ed.2d 306, 318 (1974); *Graham v. Richardson*, 403 U.S. 365, 374–75, 91 S.Ct. 1848, 1853–54, 29 L.Ed.2d 534, 543 (1971); *Shapiro v. Thompson*, 394 U.S. 618, 633, 89 S.Ct. 1322, 1330, 22 L.Ed.2d 600, 614 (1969).

13. *Cf. Richardson v. Belcher*, 404 U.S. 78, 83–84, 92 S.Ct. 254, 258–259, 30 L.Ed.2d 231, 235–36 (1971) (upholding offset provision in federal social security act reducing social security benefits for recipients also receiving workers' compensation). AS 23.30.187 ("Compensation is not payable to an employee under [the permanent and temporary total disability statutes] for a week in which the employee receives unemployment benefits") appears to serve a similar purpose.

flaw runs through each of appellants' arguments regarding the importance of the state's interest in the goal of adjusting benefit levels to the economic environment of the recipient. It must be remembered that the statute pursues equality in terms of the prospective pre-injury earning capacity of each recipient. We think it unsupportable to redefine earning capacity when a recipient changes his geographical residence. A worker's earning capacity is primarily determined both by the worker's skills and by his or her ability to seek out markets for his or her labor. As Brown points out, the members of the plaintiff class "have a demonstrated capacity to travel to high wage areas." [14]

Yet we agree that the State has important interests in avoiding disincentives to rehabilitation and in creating incentives for injured workers to go back to work, and we agree that the effectiveness of these incentives may depend on the cost of living in the state in which the worker lives. The mechanism by which the Alaska Workers' Compensation Act generally protects the state interests in rehabilitation and return to work is by setting benefit levels for each recipient below what he or she was actually making at the time of injury. *See* AS 23.30.175(a). As a general proposition lower benefit levels will carry a lesser danger of disincentive no matter where the recipient is located. However, if an injured worker is able to live in an area where the general cost of living is much lower than in Alaska, the worker's unadjusted compensation benefits may in terms of real income be in excess of the actual wage he or she received when employed, and paying the worker unadjusted amounts of benefits may actually discourage a return to work.

B. *Application of Standard of Review.*

[13] Under our equal protection analysis we examine "the closeness of the means-to-ends fit" between the legislation and its purported goals. *Ostrosky*, 667 P.2d at 1193. Accepting the proposition that the legislature may attempt to adjust the benefits of workers' compensation recipients based on their economic environment as defined in terms of geographic location, it remains to be determined whether AS 23.30.175(d) is well designed to achieve this objective. We hold that section 175(d) imposes a substantial penalty upon the exercise by Brown and the plaintiff class of the right to travel out of Alaska. Accordingly, the burden on the state to justify this legislation is a very high one.

[14] When examining section 175(d)'s impact on the right of interstate migration, the relevant questions are whether section 175(d) operates in such a way that the reasonable recipient would be deterred from exercising the right to travel, and the degree of that deterrence.[15]

[15] The State argues that injured workers who leave Alaska and thus come within the coverage of section 175(d) are really in no worse a position than workers who stay within the state and continue to receive unadjusted benefits. The State's rationale is that workers within Alaska receive benefits which reflect wages they could be earning in Alaska but for their injury, and workers within other states receive benefits related to the money they could be earning in their particular state if they were suddenly returned to health. Thus the State argues that section 175(d) recipients are in the same position as other recipients, and the exercise of their travel rights is not deterred.

An extension of the State's argument is that workers' compensation recipients will not be inhibited in exercising their migration rights by the fact that their benefits out of Alaska will be lower than benefits within Alaska. The recipients will be satis-

14. If we posit the example of a pipe-fitter injured in Alaska who chooses to convalesce in Oregon, we think that the fact of his repose in Oregon casts no inference concerning his inclination to return to work in Alaska if he were healthy.

15. We follow the federal rule that no showing of actual deterrence need be made. The standard is an objective one. *See supra* note 11.

fied, at least to the extent that their travel decisions will not be influenced, with the knowledge that their benefits bear the same relation to the average wages of their state of residence as they would have borne to Alaska wages had they remained in Alaska. We think that this is an unrealistic and untenable view of section 175(d)'s impact upon the interstate movement of disability recipients.

The appellants' argument regarding the degree to which section 175(d) penalizes the right to travel would be more persuasive if the adjustment calculation were based upon reasonably accurate cost of living statistics from other states rather than upon wage levels in those states. If there were a way to equalize the buying power of benefit dollars in each state we would have difficulty in concluding that recipients would thereby suffer any penalty despite a reduction in actual dollars paid to out-of-state workers.

[16] In holding section 175(d) unconstitutional, the superior court found that "the reduction in the average weekly wage which occurs when one travels from Alaska to the other States exceeds the reduction which results in the cost of living." Relying on a 1975 report of the Alaska Legislative Affairs Agency, the superior court concluded that a disabled worker "who moved in 1974 from Anchorage to a location in another State stood to suffer an average benefit reduction of approximately 142% of the reduction in the cost of living." The court stated that no reason had been advanced, and it could think of none, for supposing that the reduction in recipients' purchasing power effected by section 175(d) had done anything other than gotten worse since 1975. Based upon its comparative analysis of the statistics, the superior court found that "disabled workers are strongly deterred from exercising their constitutional right to travel and take up residence in another State."

The response made by ALPAC and the State to the superior court's finding is an indirect one. Appellants argue that it was not feasible for the legislature to key section 175(d)'s adjustment to cost of living statistics because no reliable statistics of this kind exist. Further, the cost of living statistics published by the United States Department of Labor will no longer be available after 1982. Thus appellants contend that the legislature could not have incorporated those statistics into section 175(d).

Accepting for purposes of argument the inadequacy of all available cost of living statistics, this fact does not justify the substitution of a different statistical base and the measure of a different economic variable. Both sides apparently concede that there is no necessary correlation between wages and cost of living. AS 23.30.175(d) will therefore always carry with it the risk that the adjustment it effects will overcompensate for any cost of living differential that exists between Alaska and other states. The State notes that there is an "up side" to this risk, in that workers who move to a state where wages in relation to those in Alaska are higher than the relative cost of living will receive more in actual benefit value than they would receive in Alaska. However, this does not vitiate the finding of penalty made by the superior court. The risk of severe benefit reductions based upon variations in economic conditions which do not reflect the purchasing power of benefit dollars is a significant penalty in itself. By all appearances the current effect of section 175(d) is arbitrarily to over-deflate benefits for actual cost of living differentials. It is thus evident that the "down side" of the risk created by the incorporation of wage figures is quite real.

We conclude that the State has failed to meet its high burden. We affirm that portion of the superior court's opinion invalidating former AS 23.30.175(d) on state equal protection grounds. Because we do not view the 1982 and 1983 amendments to section 175 as materially altering the provision within the analysis of this decision, we hold also that AS 23.30.175(c) as currently enacted is also invalid.

II. DAMAGES

Upon declaring former AS 23.30.175(d) unconstitutional, the superior court assessed damages against ALPAC for the additional benefits members of the plaintiff class would have received if section 175(d) had not been enacted. ALPAC argues on appeal that it is a private entity and should not be found liable in damages for its good faith compliance with a statute.

There are three conceivable causes of action available to Brown in this case which might support a damages suit against ALPAC. Under the federal law, 42 U.S.C. § 1983 subjects "any person" to damages liability who "under color of state law" deprives another of federally-guaranteed rights.[16] Aside from section 1983, it is now well established in the federal courts that some provisions of the United States Constitution may be enforced in a suit for damages even in the absence of a specific statute supplying a cause of action. *Carlson v. Green*, 446 U.S. 14, 100 S.Ct. 1468, 64 L.Ed.2d 15 (1980) (eighth amendment); *Davis v. Passman*, 442 U.S. 228, 99 S.Ct. 2264, 60 L.Ed.2d 846 (1979) (fifth amendment); *Bivens v. Six Unknown Agents of the Federal Bureau of Narcotics*, 403 U.S. 388, 91 S.Ct. 1999, 29 L.Ed.2d 619 (1971) (fourth amendment). Finally, Brown suggests that we should find a *Bivens*-type implied damages remedy is available under the state constitution. *See King v. Alaska State Housing Authority*, 633 P.2d 256, 259–61 (Alaska 1981).

Assuming the existence of all three rights of action outlined above, it is next necessary to determine whether ALPAC is a proper defendant. Here Brown's claim encounters a major obstacle. Under all three theories it is necessary that ALPAC acted in some way which caused injury to the plaintiff class. Based upon Brown's arguments, it is difficult to identify what conduct on the part of ALPAC should be held to give rise to liability.

[17] Brown argues at length that the adjustment scheme in section 175(d) is the product of state action, and that ALPAC should therefore be vulnerable to a suit in damages. It is hornbook law that most of the rights secured by the constitution are protected only against governmental infringement. *Flagg Brothers, Inc. v. Brooks*, 436 U.S. 149, 156, 98 S.Ct. 1729, 1733, 56 L.Ed.2d 185, 193 (1978); *Jackson v. Metropolitan Edison Co.*, 419 U.S. 345, 349, 95 S.Ct. 449, 452, 42 L.Ed.2d 477, 483 (1974). Private parties may sometimes be subjected to suit because they have usurped or assumed functions traditionally exercised only by the government, or because their actions were taken in collaboration with action by the state. *See Gerena v. Puerto Rico Legal Services, Inc.*, 697 F.2d 447, 449–52 (1st Cir.1983).[17] Even in

16. 42 U.S.C. § 1983 provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

17. *See also Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 102 S.Ct. 2744, 73 L.Ed.2d 482 (1982). The *Lugar* Court reviewed two prerequisites that exist for the right to sue a private party under 42 U.S.C. § 1983:

> First, the deprivation must be caused by the exercise of some right or privilege created by the state or by a rule of conduct imposed by the state or by a person for whom the state is responsible.... Second, the party charged with the deprivation must be a person who may fairly be said to be a state actor. This may be because he is a state official, because he has acted together with or has obtained significant aid from state officials, or because his conduct is otherwise chargeable to the state. Without a limit such as this, private parties could face constitutional litigation whenever they seek to rely on some state rule governing their interactions with the community surrounding them.

at 937, 102 S.Ct. at 2754, 73 L.Ed.2d at 495. The lower federal courts have been active in the short time since the *Lugar* decision in interpreting the "state actor" requirement. *See Coleman v. Turpen*, 697 F.2d 1341, 1345 (10th Cir.1983); *Gerena, supra*, at 449–52; *Adams v. Bain*, 697

cases where a cause of action is found to lie against a private party for the violation of the constitutional rights of another, it is a substantial additional leap to find that the private defendant may be liable in damages. *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 942 n. 23, 102 S.Ct. 2744, 2757 n. 23, 73 L.Ed.2d 482, 499 n. 23 (1982); *Adickes v. Kress & Co.*, 398 U.S. 144, 174 n. 44, 90 S.Ct. 1598, 1617 n. 44, 26 L.Ed.2d 142, 163 n. 44 (1970). The Supreme Court in *Lugar*, although not passing upon the issue, suggested that there should be an affirmative defense for "private individuals who innocently make use of seemingly valid state laws." 457 U.S. at 942 n. 23, 102 S.Ct. at 2757 n. 23, 73 L.Ed.2d at 499 n. 23.

The general rule against private party liability for constitutional transgressions has particular force in the setting of this case. Were we to hold ALPAC liable in damages, we would in effect be creating an affirmative duty running to private persons to disobey unconstitutional statutes in advance of a judicial determination of the laws' validity.[18] This we are reluctant to do.

[18, 19] We therefore conclude that private entities who regulate their behavior in good faith compliance with a validly enacted law cannot by the fact of their compliance be held legally responsible for constitutional defects in the law. We hold that the award of damages against ALPAC cannot be sustained.[19] The decision below is AFFIRMED in part, and REVERSED in part, in accordance with this opinion.

MOORE, J., not participating.

COMPTON, Justice, dissenting.

I dissent from the court's holding that former AS 23.30.175(d) violates the equal protection clause of the Alaska Constitution.

First, I object to the court's conclusion "that section 175(d) imposes a substantial penalty upon the exercise by Brown and the plaintiff class of the right to travel out of Alaska." 687 P.2d at 273 (Alaska 1984). I acknowledge that a reduction in workers' compensation may influence an injured worker's decision on whether to convalesce outside of Alaska; however, I do not believe that section 175(d) actually penalizes a person's right to travel.

The interest of an injured worker convalescing outside of Alaska in receiving the same benefits as he would receive were he convalescing in Alaska is placed in its prop-

F.2d 1213, 1217 (4th Cir.1982); *Daniels v. Twin Oaks Nursing Home*, 692 F.2d 1321, 1332–35 (11th Cir.1982) (Hoffman, District Judge, concurring); *Earnest v. Lowentritt*, 690 F.2d 1198, 1200–02 (5th Cir.1982).

18. The class action complaint filed by Brown against ALPAC illustrates the difficulty of this point. Brown alleged that, "[a]s a result of the enactment and enforcement of AS 23.30.175, [ALPAC] has wrongfully withheld monies due and owing Plaintiff BROWN and all other members of the class." ALPAC neither enacted section 175, nor was responsible for its enforcement. Second, Brown's complaint stated that "[ALPAC] has been unjustly enriched in an amount equal to the difference between the benefits actually paid to Plaintiff and other class members, and the benefits which would have been paid if the Plaintiff and other class members had resided in the State of Alaska at the time of payment." Brown's factual assertion on this score, however, ignores the relationship between benefits paid by the insurance carrier and premiums assessed against the employer. Brown has cited no evidence for the proposition that ALPAC continued to collect premiums at the same level after the passage of the adjustment provision as before. Indeed, one of the two major purposes behind section 175(d) was the reduction of employer premiums. Third, Brown alleged that "[ALPAC], acting under color of the authority conferred upon it by the laws of the State of Alaska, and in particular, Alaska Statute 23.30.175, has been, and is currently, discriminating against Plaintiff and other nonresident workmen's compensation benefit recipients solely because of their status as nonresidents." Again, Brown's charges amount to nothing more than the fact that ALPAC complied with the law. No discriminations other than those mandated with mathematical specificity by section 175 have been attributed to ALPAC.

19. However, the prospective effect of the superior court's judgment is unaffected by this conclusion. From and after the effective date of the judgment appellant and the other class members are entitled to the payments they would have received except for the unconstitutional provisions of § 175.

er perspective by comparing this statute with statutes that have been found to penalize the right to travel. The United States Supreme Court has invalidated statutes challenged under the federal equal protection clause because they penalized the right to travel in only three cases, *Memorial Hospital v. Maricopa County*, 415 U.S. 250, 94 S.Ct. 1076, 39 L.Ed.2d 306 (1974), *Dunn v. Blumstein*, 405 U.S. 330, 92 S.Ct. 995, 31 L.Ed.2d 274 (1972), and *Shapiro v. Thompson*, 394 U.S. 618, 89 S.Ct. 1322, 22 L.Ed.2d 600 (1969). The classifications in these cases differ from section 175(d) in several respects.

First, in all three cases, the classifications denied either a "basic necessity of life" (*Maricopa County* (nonemergency health care) and *Shapiro* (welfare benefits)) or a "fundamental political right" (*Dunn* (voting)). In this case, the classification denies neither a basic necessity of life nor a fundamental political right. Furthermore, the statute does not *deny* workers' compensation benefits, but at most only *reduces* the amount received. Even with the reduction, Brown received about $11,000 per year, which is $3,000 *more* than the maximum amount available under the California workers' compensation system.

The second distinction is that *Maricopa County*, *Dunn*, and *Shapiro* all involved durational residency requirements, i.e., whether a state may deny certain benefits or privileges to new residents which are enjoyed by its "old" residents, until they have been residents for a specified period. Section 175(d) does not impose any durational requirement, nor is it even a "residency requirement" in the usual sense of the phrase.[1] Even if it were, a state generally is much more able to distinguish between residents and non-residents than between long and short term residents. *Williams v. Zobel*, 619 P.2d 448, 451 n. 7 (1980), *rev'd on other grounds*, 457 U.S. 55, 102 S.Ct. 2309, 72 L.Ed.2d 672 (1982), *citing Vlandis v. Kline*, 412 U.S. 441, 93 S.Ct. 2230, 37 L.Ed.2d 63; *Fisher v. Reiser*, 610 F.2d 629 (9th Cir.1979).

The Nevada statute challenged in *Fisher v. Reiser* is similar to section 175(d). The statute granted cost of living increases to workers' compensation recipients who resided in Nevada, but not to those who were no longer Nevada residents. The court noted that "[i]n *Shapiro*, *Dunn*, and *Maricopa County*, the issue involved the obligation and responsibility of the claimant's new state of residence; here the claimants seek to enforce an obligation against the state of former residence. The distinction is critical." 610 F.2d at 633. In support of its conclusion that the obligation to new residents imposed under *Shapiro* and *Maricopa County* does not automatically extend to former residents, the court in *Fisher* cited to *Califano v. Torres*, 435 U.S. 1, 98 S.Ct. 906, 55 L.Ed.2d 65 (1978). In that case, the Supplemental Security Income Act provided SSI benefits only while the claimant resided in a state or the District of Columbia. Torres lost his benefits upon moving to Puerto Rico. The Court stated:

> As the Court said in Memorial Hospital, "the right of interstate travel must be seen as insuring new residents the same right to vital governmental benefits and privileges in the States to which they migrate as are enjoyed by other residents." [*Memorial Hospital v. Maricopa County*, 415 U.S. at 261 [94 S.Ct. at 1084], 39 L.Ed.2d at 317.]
>
> In the present cases the District Court altogether transposed that proposition. It held that the Constitution requires that a person who travels to Puerto Rico must be given benefits superior to those enjoyed by other residents of Puerto

1. 8 AAC 45.900(b) provides:
> In AS 23.30.175, "resides" means abides, dwells, inhabits, or lives. In applying the term to the facts of a specific case, the inquiry will be directed largely toward determining with what jurisdiction's economy the employee must contend.

Therefore, "residence" does not mean "domicile" (presence plus intent to remain); the benefits of recipients domiciled outside of Alaska but living in Alaska are not reduced, whereas the benefits of recipients who are domiciled in Alaska but living outside of Alaska are reduced.

> Rico if the newcomer enjoyed those benefits in the State from which he came. This Court has never held that the constitutional right to travel embraces any such doctrine, and we decline to do so now.

435 U.S. at 4, 98 S.Ct. at 908, 55 L.Ed.2d at 68–69 (footnote omitted).

Although the courts in *Fisher* and *Torres* applied the federal equal protection test, I believe they are persuasive in pointing out that there is no constitutional right for benefits received in one state to continue after the person has left that state. As the State notes in its brief, "a state certainly need not encourage injured workers to leave the state for destinations where they can live more inexpensively and continue to collect Alaska compensation benefits that are higher than the wages they would earn if working. Nor should Alaskan consumers, who ultimately bear the cost of the premiums, be burdened with financing these excesses." In my opinion, the statute does not penalize Brown's right to travel. Rather, it attempts to prevent him from receiving an economic windfall when he moves to a state with a lower cost of living.

Second, I object to the court's rejection of the state's objective of fostering rehabilitation by adjusting benefits when convalescence occurs outside of Alaska. It cannot be disputed that a major goal of the workers' compensation system in general is the rapid rehabilitation of an injured worker so that he or she can return to work. *See* 1 A. Larson, The Law of Workmen's Compensation § 2.50, at 11–12 (1982). One reason most states award an injured worker only a percentage of his wages is because excessive benefits may hamper the incentive to return to work, and encourage him to malinger. Given that Alaska benefits are based on Alaskan wages, which are higher than wages in most states, receiving these benefits in other states would frustrate the rehabilitation goal because it would be more profitable to receive benefits than to work. Adjusting the wages so that they are closer to the wages in the state of residence removes or lessens the incentive to malinger.

It is true, as the court's opinion notes, that just because an injured worker convalesces in a certain state does not mean he will work in that state after recovery. 687 P.2d at 273, n. 14. It is equally presumptuous, however, to assume that the worker will return to Alaska and find another high-paying job after he is rehabilitated. If an injured worker were allowed to receive the full two-thirds of his pre-injury salary (up to $49,000 per year) while living in a state with a much lower cost of living, I suspect that his incentive to work in any state, including Alaska, would be greatly diminished. By adjusting the benefit levels to more accurately reflect the economic conditions of the state of convalescence, the injured worker's incentive to return to work, no matter where that is, will be enhanced. Thus, section 175(d) substantially furthers the legitimate goal of rehabilitation, and on this ground, the statute should be upheld.

The superior court agreed that section 175(d) furthers this objective, but invalidated the statute on the ground that the objective could have been accomplished by using a less restrictive alternative to the chosen means. Rather than adjusting benefits based on average weekly wage data, the superior court believed that using the cost of living data would have accomplished the same objective more accurately. The court stated:

> In the Fall of 1973, the average annual cost of living for a four member family in Anchorage with an intermediate budget was $16,520, compared to a national urban average for such a family of $12,626. Thus, the national urban average cost of living was 76% of the Anchorage cost, a reduction of 24%. In 1974, the published average weekly wage for Alaska was $248.00, compared to an average weekly wage outside Alaska of $162.93. Thus, the average weekly wage outside Alaska was only 66% of the Alaskan average, a reduction of 34%.

The court concluded that this ten percent difference between the two formulas causes a "severe reduction in the purchasing power, in real terms, of the monetary benefits paid to disabled non-residents," but not to Alaska residents, and therefore injured workers are deterred from residing in another state.

In my opinion, it was error for the superior court to invalidate section 175(d) on this ground. First, cost of living statistics do not provide a workable alternative to average weekly wage statistics. Cost of living statistics are based on hypothetical family budgets for only twenty-eight urban areas and thus cannot accurately determine the actual cost of living in the area in which the injured worker convalesces. A more practical problem with using cost of living statistics is that they have been discontinued.[2]

Second, although using average weekly wage data is an imperfect measure of cost of living differentials, a perfect fit between means and ends is not required. Requiring compulsively neat logical correlations between classification and objective would ignore legitimate demands for legislative flexibility. Gunther, *Forward: In Search of Evolving Doctrine on a Changing Court: A Model for a Newer Equal Protection*, 86 Harv.L.Rev. 1, 21 (1972). *See also Rose v. Commercial Fisheries Entry Commission*, 647 P.2d 154, 159–60 (Alaska 1982); *Commercial Fisheries Entry Commission v. Apokedak*, 606 P.2d 1255, 1267 (Alaska 1980).

Although the adjustment is not perfect, I believe that section 175(d) is an acceptable attempt to meet acknowledged differences in the economic conditions of Alaska and other states. The equal protection clause requires that all individuals, similarly situated, be treated alike. As the State asserts:

> Rather than taking identically-situated individuals, and treating them dissimilarly, AS 23.30.175(d) has the opposite effect; that is, the benefits of individuals who *should* receive comparable compensation, but absent the statute, would not, because of the disparate wage levels and living costs of their places of residence, are adjusted to account for those circumstances.

If there were no statutory adjustment, recipients who remain in Alaska would be placed at a disadvantage when compared to those recipients because the cost of living is twenty four percent higher in Alaska than the national urban average.

In sum, the distinction between residence and non-residence is really a distinction between the economic conditions with which benefit recipients must contend, and is a rough attempt by the state to be neutral to recipients living in and outside of Alaska. This attempt seems to be the most fair and workable alternative. One could imagine a harsher alternative. For example, a statute that requires all benefits to be allocated only on the basis of the state of continued residence, rather than on the state of injury; under section 175(d)'s formula, Alaska's higher wages are always factored into the ratio and therefore an injured worker would always receive more under section 175(d) than under this hypothetical statute.[3] In this sense, he is always "rewarded" for his initiative to migrate to Alaska. When viewed from this angle, and considering how dissimilar this classification is from other classifications that have been invalidated under the Alaska and federal equal protection clauses, I would hold that this statute is constitutional.

2. The Autumn 1981 Urban Family Budget, released April 16, 1982, by the United States Department of Labor, Bureau of Labor Statistics, states:

> This is the last release of four-person family budget data. The Bureau of Labor Statistics eliminated the program as part of the recent budget reduction. The expenditure data on which the budgets are based are now 20 years old. Continuation of the program would have required revision of concepts and expenditure data and extensive price collection, for which funding was not available.

3. For example, under the hypothetical statute, the maximum amount Brown would receive is $154.00 per week (using the California rates); the amount he received under section 175(d) was $211.91 per week.

SB

322

(File 7)

HOUSE LABOR AND COMMERCE COMMITTEE

REPRESENTATIVE DAVE DONLEY, CHAIRMAN

WORKERS' COMPENSATION LEGISLATION

Comparative Analysis - House and Senate Bills
Prepared by the House Labor and Commerce Committee
February 23, 1988

ISSUE	HB 352/SB 322	CURRENT LAW	PUBLIC TESTIMONY	CS SB 322 (L&C)
(1) Standard of evidence to uphold a Board decision	"Any evidence" standard set in AS 23.30.(b) under Legislative intent language in Section 1.	"Substantial evidence"	Several participants argued that the "any evidence" standard was too broad and should be amended to read "any reasonable" or "preponderance of evidence".	The "any evidence" standard is changed to provide that a Board's decision is conclusive "unless the court finds that a reasonable person could not have reached the conclusion made by the Board".
(2) Adjust benefits by COLA	Adjusts benefits for workers by the cost of living (COLA) for their area of residence	Adjusts benefits for workers by a formula based on the difference between the hourly wage in Alaska vs the hourly wage for the same kind of work in another state.	Some participants expressed concern that this change may have constitutional problems, particularly since a reliable source of informaton about the COLA by states is hard to obtain. Generally, testimony favored this change.	Legislative Intent language in Section 1. is amended to include the word "fair" under the purposes for which the workers' compensation program was created.
(3) Board established list of providers	Board establishes and maintains a list of health care providers and may choose providers on a rotating basis to conduct IME's and other services at the request of the Board.	Health care providers picked at random by employer/insurer, employee, or by the Board.	Some participants expressed concern that some providers may be "black-balled" from the list and have no recourse to address their grievance under this section.	AS 23.30.005(h) is amended to change "may" to "shall", thus requiring the Board to establish the list of providers. AS 23.30.005 (m) is amended to change "shall" immediately adopt new regulations" to "may".
(4) Reporting of prior existing injury	AS 23.30.020(b) denies benefits to a worker who "knowlingly makes a false statement" about a pre-existing injury and the employer (1) depends on that statement in hiring and (2) the prior injury has a causal relationship to the second injury.	Current law is silent on this particular circumstance although there is a general prohibition in AS 23.30.250 that makes it a felony (perjury) for anyone to make a false or misleading statement for the purposes of obtaining or denying a workers' comp benefit.	There was some testimony that a worker may make a false statement through omission or misunderstanding and later be denied benefits. Generally this addition was supported because an employer has to have the information to meet reporting requirements under the second injury fund. Fairbanks United supported this change but suggested (1) that a standardized form be used, (2) adding provisions for making a prompt determination as to whether fraud was committed and (3) that an employer have immunity from civil liability from a worker denied benefits under (b).	A new Section 5 (AS 23.30.025) is added to provide that any "all states' rider" on a workers' compensation policy issued from another state must designate whether Alaska is one of the states covered by the rider and the report must be submitted to the Department of Labor under AS 23.30.085. (Upon receipt of the report, DOL could to refuse to recognize a policy if the rates paid by the employer/firm are not adequate for Alaska coverage.) See #5 under "OTHER ISSUES". A new Section 6 (AS 23.30.030) is added to provide that a premium paid for insurance may be paid semi-annually if requested by the insured and if the annual policy is $2,000 or more and requires the insurer to notify the insured of this provision.

ISSUE	HB 352/SB 322	CURRENT LAW	PUBLIC TESTIMONY	PROPOSED (Senate) CS
				A new Section 8 (AS 23.30.040(h) is added to roll in the major provision of HB 177 to provide that administrative expenses for the second injury fund will be paid from the fund. The effect of this cost-saving measure is to give the pending legislation (HB 352/SB 322) a zero fiscal note.
(5) Vocational Rehabilitation Services Selection of Rehab Serv. Administrator	AS 23.30.041 (a) Board selects a Reemployment Services Administrator (RSA) to (b) perform functions outlined in paragraphs (1 through 4) including: enforcement of regulations, recommending regulations and monitoring the quality and effectiveness of programs and (5) (a through d) monitoring the costs of rehab programs and following up on clients and (b) establish and maintain a list of qualified specialists and (7) promote awareness of the program	AS 23.30.041(a) provides that the Board shall select a rehabilitation administrator to (b) implement the section and study the program.	Some participants objected to what they termed as the "sweeping powers" granted to the RSA under pending legislation. Fairbanks United was not convinced that the proposed changes to the rehab section would work and suggested, (1) requirements for reporting/compiling data on the costs of rehab evaluations, (2) implementation of regulations that require timely action on cases, (3) establishing a task force to track the rehab section, and (4)redirecting the second injury fund to provide incentives for employers to rehire injured workers.	AS 23.30.041 is amended into a new format with only a few substantive changes that include:
Rotating roster for selection:	AS 23.30.041 (c) requires the RSA to establish and maintain a rotating roster of specialists to perform eligibility evaluations for rehab and to make selections from the list when needed.			AS 23.30.041(c) is further amended to provide that the list maintained by the RSA shall be "on a rotating and geographic basis".
	AS. 23.30.041 (d) provides that an employee shall be eligible for rehab services if a doctor predicts that the worker will have a permanent impairment from their injury that will leave them with less than what it it takes to do the job they were (1) doing at the time of injury or (2) held during the last ten years long enough to learn the necessary skills.	AS 23.30.041(c) provides that an employee is eligible for rehab if a doctor predicts that the injury will cause a permanent impairment that precludes a return to "gainful employment"		AS 23.30.041(e)(2) is amended to include "jobs that exist in the labor market that the employee has held or received training for within 10 years before the injury....".
Eligibility for rehab services	AS 23.30.041(e) provides that an employee is not eligible if (1) employer offers employee a job at no less than 60% of pre-injury gross hourly wage or (2) employee has been previously injured, completed a rehab program, and returned to a similar job.		Several participants complained that this section would make rehab a "once in a lifetime deal" under workers comp and asked that the section be amended to permit subsequent rehab services to an injured worker if their current injury had no substantial relationship to the first injury that resulted in rehabilitation.	AS 23.30.041(f)(1) is amended to provide that "the employer offers employment within the employee's predicted post-injury physical capacities at a wage equivalent to at least the state minimum wage under AS 23.10.065 or 60% of....".

ISSUE	HB 352/SB 322	CURRENT LAW	PUBLIC TESTIMONY	PROPOSED (Senate) CS
(5) Cont'd Rehab Services	AS 23.30.041 (f) provides that a worker eligible for rehab shall select a rehab specialist from the rotating roster.	No Board maintained roster under current law.	Several voc rehab specialists objected to being chosen from a rotating roster because, (1) it was not cost effective for doing several evaluations in adjacent communities and (2) it interferes with free enterprise and free choice by employee of a rehab specialist who has demonstrated quality results.	
Conflicts	If their is a conflict between the employee/er over the choice the RSA shall appoint a specialist to perform the eligibility determination. Both parties have one right of refusal for a specialist.	AS 23.30.041(f) provides that if there is a disagreement between the employee/er, the RS shall appoint or deny a plan by any party within 14 days and any party can seek a review of the decision within 10 days under AS 23.30.110.		AS 23.30.041(f)(2) is amended to provide that "the employee has been previously rehabilitated in a former workers' compensation claim and returned to work in the same or similar occupation in terms of physical demands required of the employee at the time of the previous injury, or"
Design of Rehab Plan	The rehabilitation plan shall include (1) the occupational goals in the labor market (2) plan to acquire skills to be employed (3) cost estimate of the plan (4) length of time the plan will take (5) date plan begins (6) date of medical stability as predicted by a doctor	AS 23.30.041(d) provides that the first evaluation shall judge whether rehab is necessary including (1) if the plan allows the worker to return to work, (2) if worker can return to work without the plan, (3) costs of plan including all costs to employer and whether worker will be more or less able to work after the plan AS 23.30.041(e) provides that the plan may consist of the following with the highest preference on that which will get the worker back to work the soonest, (1) prosthetic devices (2) work site modification, (3) on the job training, (4) vocational training for a new job, (5) academic training.		A new paragraph (3) is added to AS 23.30.041(f) to provide that "at the time of medical stability no permanent impairment is identified or expected.
Agreement to the Plan	AS 23.30.041 (h) requires employee/er to sign the plan.			AS 23.30.041(h) is amended by adding a new paragraph (2) to require an inventory of the employee's abilities in formulating a rehab plan. AS 23.30.041(h)(7) is amended to read "the estimated time of medical stability as predicted by the physician". AS 23.30.041(h) is amended by adding a new paragraph (8) to require a detailed description of the rehab plan.

ISSUE	HB 352/SB 322	CURRENT LAW	PUBLIC TESTIMONY	PROPOSED (Senate) CS
(5) Vocational Rehabilitation Services Non-cooperation	AS 23.30.041 (i) provides that noncooperation by an employee shall mean loss of benefits from the date of noncooperation which is defined as failure to: (1) keep appointments, (2) maintain average grades, (3) attend programs as assigned by the specialist, (4) maintain contact, (5)cooperate in the development of the plan and participate in assigned activities, (6) comply with employees responsibilities outlined in the plan and (7) participate in activities as determined by the RSA	AS 23.30.041 (h) provides that refusal to participate means loss of benefits for the time of refusal until refusal stops. If a person who refuses to participate begins a rehab plan within two months, completes the plan and works for at least 30 days, they shall receive a lump sum of 25% of their forfeited benefits.	There was considerable public testimony in opposition to this section because people felt, (1) it gave too much power to the RSA and rehab specialist, (2) it made "too many hoops" for an injured worker to jump through when a miss on any of them would mean a loss of rehab benefits, (3) there was no adequate way for a worker to argue in their defense if they were determined to be "noncooperative".	AS 23.30.041(n) is amended to read "noncooperation means unreasonable failure to" AS 23.30.041(n)(2) is amended by deleting "average" and inserting "passing grades". AS 23.30.041 is amended by adding a new subsection (to provide an appeal process in the determination of noncooperation.
Goals for Rehab Plan	AS 23.30.041 (g) sets priority goals for the plan as, (1) on the job training, (2) vocational training, (3) academic training, (4) self employment, or (5) any combination of the above.	AS 23.30.041(i) defines priority goals for the plan as restoring a workers to gainful employment (1) at the same job or similar job with the same employer or industry, (2) a job useing the same skills at a different industry, () 3 a job using different skills but the same level of academic training, (4) a job requiring higher academic skills.	There was testimony in oppostion to changing the goal of the plan from a goal of "gainful employment".	
Time Limits	AS 23.30.041 (j) establishes a time limit on rehab so that (1) reemployment benefits may not exceed 2 years, (2) an employee or employer must ask for an eligibility evaluation within 60 days of injury, (3) determination for eligibility must be complete within 30 days of referral, (4) a rehab specialist must be selected within 10 days of being determined eligible.		There was concern expressed that the two year cut-off was arbitrary and unfair, particularly to the more seriously injured worker who may need substantial rehabilitation. There was concern expressed that 60 days was too soon in some cases and that the language should be amended to allow for extenuating circumstances.	AS 23.30.041 (c) is amended to provide that a worker must request a rehab evaluation within 90 days instead of the 60 days under proposed legislation.

ISSUE	HB 352/SB 322	CURRENT LAW	PUBLIC TESTIMONY	PROPOSED (Senate) CS
(5) Vocational Rehabilitation Services Time Limits	AS 23.30.041 (j) cont'd. (5) plan must be approved by all parties within 90 days. (6) plan begins when doctor determines that worker is medically ready and		There was considerable public comment that the time limits established under this section are too tight and that more time should be allowed or that language should be added to give the RSA a mandate to allow more time when needed.	
Standard to uphold a RSA decision	As 23.30.041 (j) (7) provides that the Board will uphold a decision by the RSA unless "abuse of discretion" can be demonstrated.		Several participants testified that the "abuse of discretion" standard would be impossible to prove and that an injured party would not have an adequate ability to protest or address a grievance.	
Cost of Plan nd Benefits nder REhab	AS 23.30.041(k) provides that the cost of the plan may not exceed $10,000. If a worker reaches medical stability before completion of the plan, temporary total disability payments cease and permanent impairment benefits will be paid at TTD rates. If PPD benefits are exhausted before the plan is complete, the employer shall pay wages not less that 60% of the workers' pre-injury spendable weekly wage, not to exceed $525/week until completion of the plan. (k) cont'd.. Any permanent impairment benefits remaining after completion of the plan shall be paid in a lump sum. Fees paid to rehab specialists shall be paid by employer and are not included in the $10,000 limit on the cost of the plan.		There was concern expressed that the $10,000 limit was too low. Several participants expressed concern about the cut-off in TTD after medical stability, specifically because a worker will begin to assume some of the costs of the rehab plan in some cases.	

ISSUE	HB 352/SB 322	CURRENT LAW	PUBLIC TESTIMONY	PROPOSED (Senate) CS
5) Vocational ehabilitation ervices	AS 23.30.041(l) provides that only a rehab specialist may accept a case. A non-specialist may work under the direct supervision of a specialist.	See below on definition of rehab specialists.		
Definitions	AS 23.30.041 (m) is the definitions section including:			
	(1) "employability" means the ability to but not necessarily the opportunity to engage in remunerative employment.	AS 23.30.041(i) defines a priority for restoring a worker to "gainful employment".	There was considerable public testimony in oppostion to the:definition of (1) employability as the ability to hold a job as opposed the the current standard of actual having a job ("gainful employment")and	
	(2) "labor market" is the area that offers employment opportunities in the following priority: (a) area of residence, (b) area of last employemnt, (c) the state, (d) other states.		(2) the expanded definition of "labor market" that is used to determine whether a worker is eligible for rehab services.	
	(3) "physical capacity" (4) "physical demands" (5) "reemployment benefits			
	(6) "rehabilation specialist" as a person who holds at least a CIRS certificate or the equivalent or better.		Several professional groups objected to the definition of a specialist and asked that the licenses and degrees of other specialists be included in the definition and that a new section be added making a "grandmother" clause to allow currently practicing rehab specialists to continue to practice.	AS 23.30.041(p)(6) is amended to include "a certified rehabilitation counselor" under the definition of a "rehabilitation specialist".
	(7) "remunerative employability" as employment with wages equal to or greater than 50% of the gross hourly wages prior to injury, adjusted by the applicable area of residence.		There was considerable public testimony that the 60% standard for post-injury wages was too low and was unfair. Participants requested that the standard be amended so that the 60% could not be less than minimum wage.	

ISSUE	HB 352/SB 322	CURRENT LAW	PUBLIC TESTIMONY	PROPOSED (Senate) CS
6) Exclusiveness of Liability	Excludes workers' comp benefits for workers who make a false statement about a preexisting injury under AS 23.30.20(b)		Fairbanks United suggested that this section be amended to make the employer immune from liability when a worker is denied benefits under this section.	
) MEDICAL "Doctor Shopping"	AS 23.30.095 (a) is amended to provide that an employee can make only one change in the choice of treating physician without written permission of the employer. Referral to a specialist by a treating physician is not considered a choice. Notice of change in treating physician must be made to employer before change is made.	No limit on number of changes in the choice of doctor by either employee or employer although a changes is supposed to occur only through regulations developed by the Board.	Public comment pointed out that "doctor shopping" was as much a problem with employers as it was with employees and that an employers choice for a physician to perform IME's should be limited in the same way an employees choice is under the proposed legislation.	
'Continuous id Multiple reatments"	AS 23.30.095 (c) is amended to provide that claims for continuing and multiple treatments are not valid unless they were submitted in a written plan before treatment commences that is completed and signed by treating physician and mailed to employer one week before beginning of treatment. Initial treatment plan shall not exceed more than 20 visits in first 60 days. If more than 20 visits in 60 days or more than 4/month after first 60 days, a physician shall document the need for services in excess of the guidelines in the plan.		Fairbanks United suggested that this approach won't work, will increase costs, and should be deleted from the bill. Participants, particularly patients of chiropractors and the doctors themselves, objected to the limits on continuing and/or multiple treatments as arbitrary, unfair, and discriminatory against a specific medical practitioner. Chiropractors submitted eight pages of suggested amendmens to this section of the bill.	AS 23.30.095(e) is amended to provide that an IME requested by an employer every 60 (30) days is considered reasonable.

ISSUE	HB 352/SB 322	CURRENT LAW	PUBLIC TESTIMONY	PROPOSED (Senate) CS
(7) MEDICAL Cont'd. "Independent Medical Exams" IME's	AS 23.30.095(e) is amended to provide that an employers request for an IME within 14 days of injury and every 30 days thereafter is reasonable and that a worker is non-cooperative if they refuse to submit to an IME.	"refusal to submit to any exam".	Several participants expressed concern that employers would abuse the non-cooperation provisions to force workers to comply with unnecessary and painful tests. Suggested amendments included providing that only "reasonable" exams shall be required if they are the accepted method to detect the degree of injury and are related to the actual injury being examined. Fairbanks United suggested deleting this amended language altogether. Participants expressed concern that an employer would use the presumption of reasonableness under AS 23.30.095(e) to force workers to submit to painful, humiliating and unnecessary tests in order to coerce them into an early settlement.	AS 23.30.095(e) is further amended to add the phrase "unless medically necessary, the physician shall use existing diagnostic data to complete the examination".
"Medical Fees"	AS 23.30.095(f) is amended to require that medical fees shall not exceed "usual, customary, and reasonable fees" for treatment or services in the community, as determined by the Board.	Fees limited to "charges that prevail in the same community for similar treatment of injured persons with a like standard of living"	This section was strongly supported by participants, including the Alaska Medical Association.	AS 23.30.095(f) is amended by adding language that makes it clear than an employee cannot be required to pay for medical services.
"Medical eview Committee"	AS 23.30.095(j) is repealed and reenacted to authorize the Board to appoint or contract with a medical review committee or anyone to assist and advise them on medical issues.	Board shall adopt and use a schedule to determine the existance and degree of a permanent impairment consistent with the AMA guide lines.	Some participants expressed concern that this would allow the Board to hire "outsiders" and that they should be limited to advisory boards and committees that are located in Alaska. Fairbanks United testified that this section should remain as it is in current law.	

ISSUE	HB 352/SB 322	CURRENT LAW	PUBLIC TESTIMONY	PROPOSED (Senate) CS
7) MEDICAL Cont'd. "Second IME"	AS 23.30.095(k) provides that when there is a conflict between the employers' IME and the employees' treating physician, the Baord will select a physician from the rotating roster to perform a second IME whose opinion will be presumed to be correct unless rebutted by clear and convincing evidence. AS 23.30.095(k) cont'd Second IME is immune from civil liability for their opinion except in cases of fraud.	Current law is silent on this question but current practice is for the Board to try and weigh the various opinions of physicians and make a judgement as to who is correct. This practice requires the Board to basically make a medical decision without the proper training and experience to do so.	Members of the pubic and some physicians objected to the second IME's opinon having the presumption of correctness and suggested that all three physicians opinions (treating, physician, employer's IME, and Boards' IME) should have the same weight and be judged by the Board on an equal basis. Fairbanks United suggested an independent multi-discipline panel of Board certified physicians should be used to provide an independent exam. Several participants expressed concern that the "fraud" standard was to restrictive and impossible to prove and suggested that the section include "fraud, misrepresentation, and gross negligence"	AS 23.30.095(k) is further amended to provide that a person may not seek damages against the second IME except for "fraud or gross incompetence".
) Stress Claims	AS 23.30.120 (c) is amended to provide that the presumption of compensibility under workers' comp does not apply to mental injuries caused by "stress" AS 23.265 (17) provides that a compensable injury does not include mental injury caused by stress unless (a) the stress was unusual and extraordinary compared to other workers doing the same or similar job and (b) work related stress was the predominant cause of the injury measured by actual events and not by an employees perception of events.	Current law is silent on the question of "stress" claims and the Courts have ruled in at least one case than an employees perception of events may be grounds for a stress claim and that the injury does not have to depend on an objective analysis of actual events. In additon, there is a presumption of compensability whenever an injury is job-related.	The majority of public testimony supported making an exception to the "presumption of conpensibility" in "stress" claims because (1) stress claims are becomming more frequent and (2) an employer can not defend against a "stress" claim, particularly when it can be based on a workers' perception of events. Some members of the public and at least one Senator expressed concern that some stress injuries resulting from racial or sexual harrassment may be precluded under the definition. Fairbanks United suggested using a "preponderence of evidence" test in this section and requested a better definition of "mental injury".	AS 23.30.125(f) is amended to provide that a finding of facts by the Board in a "stress" injury case is conclusive "unless the court specifically finds that a reasonable person could not have reached the conclusion made by the Board."

ISSUE	HB 352/SB 322	CURRENT LAW	PUBLIC TESTIMONY	PROPOSED (Senate) CS
(9) Payments of benefits in a conflict.	AS 23.30.155(d) is amended to provide that when there is a conflict over which employer/carrier is obligated to pay, but there is no conflict over whether the injury at question is compensible, the last employer shall immediately pay benefits to the workers. The employer or carrier ultimately deemed responsible will reimburse thepayee with interest.		Public testimony supported this change.	AS 23.30.155(c) is amended to provide that an insurer/adjuster (employer) is responsible for submitting certain reports to the Board. Several other changes are included to make the section consistent with this change. AS 23.30.155(c) is further amended to provide a penalties section for violation of this section. As 23.30.155(m) is amended to require the reports to be submitted by an insurer or adjuster as opposed to the employer. AS 23.30.155(m) is further amended to add a penalty provision for failure to submit reports so that "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". AS 23.30.155 is amended by adding a new subsection (n) to provide that the notification and penalty sections don't apply to self-insureds.
(10) Rates of Compensation	AS 23.30.175(a) provides that weekly compensation benefits may not be more than $700 or less than $154/week for employees with a previous wage history and not less than $110/week for workers without a wage history (or accurate history).	AS 23.30.175(a) provides that weekly compensation benefits may not be more than $1,100 or less than $110/week unless the Board determines that the workers' spendable weekly wage before the injury was less, in which case the $110/week may be decreased.	Generally, the public supported this change when they understood it. Several people said they didn't understand why the higher limit was lowered by $400 and the lower limit was raised by $44. (Majority of workers are on the low end of the scale with less than 5% qualifying for weekly benefits in excess of $700/week.) Fairbanks United supported this change but asked that someone monitor injured workers to see if they opt out of disability in order to collect unemployment benefits, which may be greater.	AS 23.30.175 (a) is amended by adding language "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".

ISSUE	HB 352/SB 322	CURRENT LAW	PUBLIC TESTIMONY	PROPOSED (Senate) CS
(11) Adjustment of benefits by COLA	AS 23.30.175 (b) (1-4) provides that weekly benefits for workers not residing in Alaska be adjusted by the COLA of their resident state.	AS 23.30.175(c) provides that benefits of workers not residing in Alaska be adjusted by the difference between the average weekly wage for a particular craft/job within the jurisdiction of the state where the worker now resides and the average weekly wage for the same or similar job in Alaska.	Generally, public testimony supported this change although there was some concern expressed about an accurate and reliable source of COLA information.	AS 23.30.175 (b)(1) is amended to read "...by the ratio of the cost of living of the area in which the recipient resides to the cost of living in this state." AS 23.30.175(b)(3) is amended to read "if the gross (average) weekly earnings (wage) of the recipient.....".
(12) Permanent Total Disability payments (PPD)	AS 23.30.180 (a) is amended to include a definition of "market for employee's services" as (1) area of residence (2) are of last employment and (3) the state. AS 23.30.180(b) provides that failure to acheive remunerative employability under AS 23.30.041 (m) does not, in itself, constitute PTD.	AS 23.30 180(a) provides that PTD payments shall be 80% of the injured workers spendable weekly wage for the continuance of the disability.	Several participants objected to the expanded definition of labor market and expressed concern that it would force workers' to leave their home and communities if there was any job in the state that they could qualify for.	AS 23.30.180 is amended by adding a new sentence to prevent a person from improperly receiving both PPD and PTD payments. AS 23.30.180 (3) is amended to read the "state (area) of residence" and a new (4) is added to read "the state of Alaska".
(13) Total emporary Disbility payments (TTD)	AS 23.30.185 if amended to provide that TTD benefits will not be paid after medical stability and shall not exceed two years in any case.		Participants asked that the section be amended to allow for TTD benefits after medical stability and in excess of two years under unusual or extenuating circumstances.	

ISSUE	HB 352/SB 322	CURRENT LAW	PUBLIC TESTIMONY	PROPOSED (Senate) CS
(14) Permanent Partial Disability Payment (PPD) "Whole Man" Value	AS 23.30.190(a) repeals the current method of computing PPD and replaces it with a formula to determine benefits based on a "whole man" value of $240,000 adjusted by the percentage of net impairment, payable in a lump sum.	AS 23.30.190 (a) provides that compensation for PPD is 80% of workers spendable weekly wage plus any TTD and TPD benefits to be paid as follows - (1) through (18) lists compensation by body part, (19) provides that in addition to comp, the Board may award up to $10,000 for disfigurement or loss of use or functions of body parts not listed in the schedule, (21) provides that benefits be based on loss of each body part when there a loss of more than one.	There was substantial public testimony that his change in the method for determining PPD was (1) arbitrary and unfair, (2) it would increase litigation because the sliding scale used to determine benefits by the percentage of disability was poorly constructed so that a worker with a 10% disability would receive half the benefits that a worker with an 11% disability would receive, (3) the lower levels were too low and did not constitute fair compensation, (4) scheduling injuries in this manner provides no mechanism for judging the effect of a permanent disability on the actual job a worker held (for instance, an attorney with a 40% disability may suffer less ill effects in seeking reemployment than a heavy construction worker with a 15% disability.)	AS 23.30.190 (a) is amended to adjust the sliding scale by adding a new schedule of adjustment factors to smooth out the curve.
"AMA guidelines"	AS 23.30.190(b) provides that the determination of the percent of disability will be based on AMA guidelines and shall not be rounded to the next five percent. Also provides that the Board <u>may</u> adopt a supplemental guideline for rating injuries not included under AMA guidelines.	AS 23.30.190(b) provides that the total comp under this section cannot exceed $60,000.	Fairbanks United asked that the <u>may</u> in (b) be changed to <u>shall</u>.	AS 23.30.190(b) is amended to read that the Board "may adopt (and use a supplemental) <u>a suplementary recognized</u> schedule for injuries that cannot be rated by use of the AMA guide.
Lower limit on Compensation for PPD	AS 23.30.190 (c) provides that an injured worker will not receive less than <u>$250.00</u>			
"Combination of prior and current injuries"	AS 23.30.190(d) provides that an impairment rating is reduced by any permanent impairment that existed before the compensated injury although, if the total of the past and current injury equal PTD the Board is not precluded from making a determination of PTD.	AS 23.30.205 (a)and(b) addresses the circumstance of a combination of prior and current injuries and provides that benefits shall be paid out of the second injury fund after 104 weeks. (c) through (f) of this section provide for reporting requirements to the second injury fund, defines what constitutes a pre-existing condition and provides guidelines for reporting when proper notice was not given.		

ISSUE	HB 352/SB 322	CURRENT LAW	PUBLIC TESTIMONY	PROPOSED (Senate) CS
(15) Temporary Partial Disability payments (TPD)	AS 23.30.200 provides that TPD benefits may not be paid in excess of 2 years.	TTP benefits may not be paid in ecesss of five years and are caluclated under AS 23.30. 200.	Some participants expressed concern that the 2 year cut-off may be too soon in some unusual circumstances and that the language should be amended to allow for that.	
"Determining wage earyning cap- capacity and spendable weekly wages).	AS 23.30.200 is amended by including a new (b) to read that the wage-earning capacity of a worker is determined by the actual spendable weekly wage of the employee if it fairly and reasonably represents the wage-earning capacity of the employee. The Board may, in the interest of justice, fix the wage-earning capacity that is reasonable, having due regard to the nature of the injury the degree of impairment, usual employment, and other factors or circumstances.	AS 23.30.200 provides that TPD benefits shall be 80% of the difference between the injured workers SWW before injury and their wage-earning capacity after injury. AS 23.30.210 provides a method for determining the wage-earning capacity of a worker by actual SWW if the SWW fairly and reasonably represents the true wage-earning capacity. If not, the Board may set the wage earning capacity	Several participants testified that conflicts over the determination of spendable weekly wage cause a substantial amount of litigation	
	AS 23.30.220(a)(2) is amended to allow the Board the ability to set the SWW if the employee had no earnings during the preceeding calendar year or was voluntarily absent from the labor market for 18 months or more of the two preceeding calendar years. However, in no case may the compensation exceed the employee's earnings at the time of injury	AS 23.30.220(a)(2) authorizes the Board to set the SWW if they determine that the gross weekly earnings at the time of injury cannot be fairly calculated under AS 23.30.229(a)(1).	Some participants expressed concern that the language in this section could result in an unfair determination of a workers' SWW if they had no (or inadequate) work history and had only worked part of a week when they were injured. Since this section prohibits a workers' benefits from exceeding their weekly wage, the concern is that their SWW will be based on the partial work week at the time of injury.	The Senate CS amends this section to provide that the SWW may be based on the projected weekly wage of the worker at the time of injury.

ISSUE	HB 352/SB 322	CURRENT LAW	PUBLIC TESTIMONY	PROPOSED (Senate) CS
(16) Determination of gross earnings.	AS 23.30.225 includes a new section requiring that vested pension and profit sharing benefits be included as part of a workers' wage for the purposes of determining gross earnings.	Vested benefits are not considered in determining gross earnings under current law.	Participants supported this change although some expressed concern that only vested beneftis were included. This section was included in the bill in response to the Hagland decision.	
(17) Discrimination	AS 23.30.247 (a) prohibits an employer from discriminating against a worker who has filed a workers' compensation claim in the past.	Current law is silent on the question of discrimination for previous filings.	Participants supported this change although some expressed concern over how it would be implemented and enforced and whether it would actually protect workers from retribution for filing compensation claims.	
(18) Medical Stability	AS 23.30.265(34) defines "medical stability" as the date after which further objectively measurable improvements from the incapacity caused by the injury is not reasonably expected to result from additional care or treatment, notwithstanding additional care or the possibility of improvement or deterioration resulting from the passage of time. Medical stability is presumed in the absence of improvement for a period of 45 days. The finding of medical stability may be rebutted with clear and convincing evidence.		There was some public testimony in opposition to this definition because of fear that it did not adequately address a situation where continuing treatment may prevent further problems or deterioration but will not produce any additional positive healing results. Fairbanks United asked for a better definition of medical stability.	

OTHER ISSUES:

1. Mandated rate decrease - Several participants asked the Committee to include language in the bill that would mandate a rate decrease for workers' clmpensation premiums for the second half of 1988 by at least 10%.

2. Unemployment Compensation - Several participants suggested amending the proposed bills to provide that an injured worker who was eligible for unemployment compensation can collect unemployment benefits when their workers' compensation benefits are exhausted and they have still been unable to find employment.

3. Mandated reporting requirements - Numerous participants, particularly legislators, expressed dismay at the lack of usuable statistical data on Alaska's workers compensation system. A change proposed in AS 23.30.040(b) (HB 352) would require all information related to paid claims in Alaska (costs of claim benefit by type such as PPD or TPD, payments for medical and rehab services, payments for legal fees for both employer/ee etc.) to be submitted annually (instead of annually on the date of the injury, as it is under current law).

4. On-going task force - Several participants, including Fairbanks United, asked that a group or task force be appointed to make an on-going study of Alaska's workers' compensation system to monitor the current system, the effects of newly adopted legislation, and to make recommendations for future changes.

5. "All states rider" - Several participants complained that non-resident firms (particularly in the construction industry) are not required to pay Alaska workers' compensation rates because they have purchased an "all states rider" on their home state policy which covers them for Alaska compensation at a cost considerably less than what resident firms must pay. Several participants asked that pending legislation be amended to specifically require that all companies with employees working in Alaska must pay the same rates for workers' compensation premiums (by classification and risk type) as Alaskan businesses do and that a stiff penalty clause should be included for companies who are found to be in violation of the requirement for Alaska workers' compensation.

6. "Alaska money" - Some participants complained that they receive workers' compensation benefits by checks drawn on "outside" banks which results in constant delays in getting their checks credited locally. They asked for a requirement under law that compensation benefits be paid by checks drawn on local banks.

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March 7, 1988

M E M O R A N D U M:

To: Members, House Labor and Commerce Committee

From: Representative Dave Donley, Chair
House Labor and Commerce Committee

Re: Proposed CS for CS SB 322 (L&C) - Workers' Compensation Legislation

In response to testimony offered during the numerous public hearings we have hosted on workers' compensation legislation and on the basis of the work of the House Labor and Commerce subcommittee on HB 352/SB322, I've asked legal services to prepare a proposed committee substitute for your consideration with the following changes from the version of the measure that passed the Senate:

1. Include a mandated rate decrease for workers' compensation premiums of no less than 10%, effective July 1, 1988 through January 1, 1990. (Attachment #1)

2. Add intent language under Section 1 recognizing that prevention of on-the-job injuries is a primary goal of the Legislature and that the workers' compensation should include incentives for improving workplace safety.

   Add a new Section mandating that insurers shall offer a rebate of not less than 5% of the annual premium costs to any employer that had no safety violations during the year covered by the premium.

3. Amend penalties under AS 23.30.075 (b) to require a mandatory fine of $10,000 for failure to carry workers' compensation insurance, in addition to any other fines, penalties or liabilities authorized under law.

4. Amend language governing the contents of the annual report to the Division of Workers' Compensation by insurers to include the number of claims filed and the percent of claims controverted during the year for which the annual report was submitted.

   Include language to require the Board (in addition to assessing any penalties under AS 23.30.155 (f), to notify the Division of Insurance when they determine that a carrier's controversions are excessive, frivolous, or designed to unfairly deny employees benefits that are due them. Upon receipt of a notice from the

Board, the Division of Insurance will initiate an investigation of the carrier for violation of the unfair claims settlement act.

5. Amend (AS 23.30.180) to delete (3) and (4) so that in determining PTD, the labor market is defined as within a workers area of residence or last area of employment.

6. Amend language governing the co..tents of the annual report to break out the costs of legal fees to reflect the fees paid to both the plaintiff and defense attorney, including all other costs associated with litigation.

7. Amend Section 9 (AS 23.30.040(c) to read: "The employee shall request an eligibility evaluation within 90 days after the employee gives the employer notice of injury unless the administrator determines the employee has unusual and extenuating physical limitations, including when an employee suffered an injury in which the employee does not know or could not have reasonably known that they would be unable to return to their previous occupation as a result of their injury that prevent the employee from making a timely request."

8. Amend Section 11 (AS 23.30.095(a) to provide that an employers choice of physician for an IME is limited to no more than one change in choice, as is an employees right of choice under the proposed legislation.

9. Amend Section 32 (AS 23.30.220(a) (2) to delete the word "voluntary" and to change the 18 months standard on page 26, line 12 to 12 months.

10. Amend Section 41 (effective date) so that this act applies to any "stress" injury that occurred on or after the date of adoption of this bill by the Legislature.

11. Include language requiring that an IME must be in the same speciality as the treating physician unless the Board unanimously agrees, on a case by case basis, to authorize an IME by a physician who is not within the same speciality of the employees physician.

12. Amend Section 21 (AS 23.30.155(c) (page 19, line 3) to provide that penalties assessed under this subsection shall be increased by (20) 30 percent.

13. Include new language amending AS 23.30.155 (f) (governing penalties for unfair denial of claims) to increase penalties from 20 percent, under current law, to 25 percent.

14. Amend Section 29 (AS 23.30.190(b) to change "may" to "shall" on page 24, line 27.

15. Include a new section requiring that benefits paid to recipients residing in Alaska be paid by checks drawn on Alaska banks or other

method of payment that is accepted as immediately redeemable by a bank in this state.

16. Amend AS 23.30.041(k) (Page 9, line 14) to read: (k) "Benefits related to the reemployment plan may not extend past two years from date of plan approval (ACCEPTANCE), at which time the benefits.....". OR

17. Amend Section 13 (AS 23.30.095(e) to reinstate the deleted language and to add new language so that it reads: "AUTHORIZED TO PRACTICE MEDICINE UNDER THE LAWS OF THE jurisdiction in which the physician resides (STATE IN WHICH THE EMPLOYEE MAY BE FOUND)".

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

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

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

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

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

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

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

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

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

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

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

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

#7

A M E N D M E N T

Offered in the HOUSE By Donley

TO: HB 352

Page 27, after line 3:

Insert a new bill section to read:

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

Renumber remaining bill sections accordingly.

Page 27, line 4:

Delete "This Act applies only"

Insert "Sections 1 - 35 of this Act apply"

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

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

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

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

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

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

50.04.355 Wages, remuneration——Average annual wage——Average weekly wage——Average annual wage for contributions purposes. On or before the fifteenth day of June of each year an "average annual wage", an "average weekly wage", and an "average annual wage for contributions purposes" shall be computed from information for the preceding calendar year including corrections thereof reported within three months after the close of that year by all employers as defined in RCW 50.04.080. The "average annual wage" is the quotient derived by dividing total remuneration reported by all employers by the average number of workers reported for all months and if the result is not a multiple of one dollar, rounding the result to the next lower multiple of one dollar. The "average annual wage" thus obtained shall be divided by fifty-two and if the result is not a multiple of one dollar, rounding the result to the next lower multiple of one dollar to determine the "average weekly wage". The "average annual wage" for contribution purposes is the quotient derived by dividing total remuneration reported by all employers subject to contributions by the average number of workers reported for all months by these same employers and if the result is not a multiple of one dollar, rounding the result to the next lower multiple of one dollar. [1977 ex.s. c 33 § 2; 1975 1st ex.s. c 228 § 1; 1973 6.]

Effective dates——Construction—— lowing RCW 50.04.030.

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

Effective date——1973 c 73: See note following RCW 50.04.030.

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

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

Chapter 50.06
TEMPORARY TOTAL DISABILITY

Sections

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

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

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

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

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

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

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

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

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

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

50.06.050 Use of wages and time worked for prior claims——Effect. The fact that wages, hours or weeks worked during the special base year may have been used in the computation of a prior valid claim for unemployment compensation shall not affect a claim for benefits made pursuant to the provisions of this chapter; however, wages, hours and weeks worked used in computing entitlement on a claim filed pursuant to this chapter shall not be available or used for establishing entitlement [1975 1st ex.s. c 228 § 11.]

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

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

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

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

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

Chapter 50.08
ESTABLISHMENT OF DEPARTMENT

Sections

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

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

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

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

"Application for initial determination" defined: RCW 50.20.140.

"Claim for benefits" defined: RCW 50.20.140.

"Claim for waiting period" defined: RCW 50.20.140.

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

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

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

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

No benefit year will be established unless it is determined that the individual earned wages in "employment" in not less than six hundred eighty hours of the individual's base year: *Provided, however,* That a benefit [illegible] establishment of a prior [illegible] year unless the individual earned wages in "employment" during the last two quarters of the new base [illegible] of not less than six times the weekly benefit amount computed for the individual's new benefit year.

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

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

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

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

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

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

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

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

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

#3

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

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

DRAFT * DRAFT * DRAFT * DRAFT * DRAFT * DRAFT * DRAFT * DRAFT * DRAFT

March 7, 1988

M E M O R A N D U M:

To: Members, House Labor and Commerce Committee

From: Representative Dave Donley, Chair
House Labor and Commerce Committee

Re: Proposed CS for CS SB 322 (L&C) - Workers' Compensation Legislation

In response to testimony offered during the numerous public hearings we have hosted on workers' compensation legislation and on the basis of the work of the House Labor and Commerce subcommittee on HB 352/SB322, I've asked legal services to prepare a proposed committee substitute for your consideration with the following changes from the version of the measure that passed the Senate:

1. Include a mandated rate decrease for workers' compensation premiums of no less than 10%, effective July 1, 1988 through January 1, 1990. (Attachment #1)

2. Add intent language under Section 1 recognizing that prevention of on-the-job injuries is a primary goal of the Legislature and that the workers' compensation should include incentives for improving workplace safety.

   Add a new Section mandating that insurers shall offer a rebate of not less than 5% of the annual premium costs to any employer that had no safety violations during the year covered by the premium.

3. Amend penalties under AS 23.30.075 (b) to require a mandatory fine of $10,000 for failure to carry workers' compensation insurance, in addition to any other fines, penalties or liabilities authorized under law.

4. Amend language governing the contents of the annual report to the Division of Workers' Compensation by insurers to include the number of claims filed and the percent of claims controverted during the year for which the annual report was submitted.

   Include language to require the Board (in addition to assessing any penalties under AS 23.30.155 (f), to notify the Division of Insurance when they determine that a carrier's controversions are excessive, frivolous, or designed to unfairly deny employees benefits that are due them. Upon receipt of a notice from the

(1)

Board, the Division of Insurance will initiate an investigation of the carrier for violation of the unfair claims settlement act.

5. Amend (AS 23.30.180) to delete (3) and (4) so that in determining PTD, the labor market is defined as within a workers area of residence or last area of employment.

6. Amend language governing the contents of the annual report to break out the costs of legal fees to reflect the fees paid to both the plaintiff and defense attorney, including all other costs associated with litigation.

7. Amend Section 9 (AS 23.30.040(c) to read: "The employee shall request an eligibility evaluation within 90 days after the employee gives the employer notice of injury unless the administrator determines the employee has unusual and extenuating physical limitations, including when an employee suffered an injury in which the employee does not know or could not have reasonably known that they would be unable to return to their previous occupation as a result of their injury that prevent the employee from making a timely request."

8. Amend Section 11 (AS 23.30.095(a) to provide that an employers choice of physician for an IME is limited to no more than one change in choice, as is an employees right of choice under the proposed legislation.

9. Amend Section 32 (AS 23.30.220(a) (2) to delete the word "voluntary" and to change the 18 months standard on page 26, line 12 to 12 months.

10. Amend Section 41 (effective date) so that this act applies to any "stress" injury that occurred on or after the date of adoption of this bill by the Legislature.

11. Include language requiring that an IME must be in the same speciality as the treating physician unless the Board unanimously agrees, on a case by case basis, to authorize an IME by a physician who is not within the same speciality of the employees physician.

12. Amend Section 21 (AS 23.30.155(c) (page 19, line 3) to provide that penalties assessed under this subsection shall be increased by (20) 30 percent.

13. Include new language amending AS 23.30.155 (f) (governing penalties for unfair denial of claims) to increase penalties from 20 percent, under current law, to 25 percent.

14. Amend Section 29 (AS 23.30.190(b) to change "may" to "shall" on page 24, line 27.

15. Include a new section requiring that benefits paid to recipients residing in Alaska be paid by checks drawn on Alaska banks or other

method of payment that is accepted as immediately redeemable by a bank in this state.

16. Amend AS 23.30.041(k) (Page 9, line 14) to read: (k) "Benefits related to the reemployment plan may not extend past two years from date of plan approval (ACCEPTANCE), at which time the benefits.....".

17. Amend Section 13 (AS 23.30.095(e) to reinstate the deleted language and to add new language so that it reads: "AUTHORIZED TO PRACTICE MEDICINE UNDER THE LAWS OF THE jurisdiction in which the physician resides (STATE IN WHICH THE EMPLOYEE MAY BE FOUND)".

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

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

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

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

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

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

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

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

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

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

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

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

#1

A M E N D M E N T

Offered in the HOUSE By Donley

TO: HB 352

Page 27, after line 3:

Insert a new bill section to read:

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

Renumber remaining bill sections accordingly.

Page 27, line 4:

Delete "This Act applies only"

Insert "Sections 1 - 35 of this Act apply"

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

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

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

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

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

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

50.04.355 Wages, remuneration——Average annual wage——Average weekly wage——Average annual wage for contributions purposes. On or before the fifteenth day of June of each year an "average annual wage", an "average weekly wage", and an "average annual wage for contributions purposes" shall be computed from information for the preceding calendar year including corrections thereof reported within three months after the close of that year by all employers as defined in RCW 50.04.080. The "average annual wage" is the quotient derived by dividing total remuneration reported by all employers by the average number of workers reported for all months and if the result is not a multiple of one dollar, rounding the result to the next lower multiple of one dollar. The "average annual wage" thus obtained shall be divided by fifty–two and if the result is not a multiple of one dollar, rounding the result to the next lower multiple of one dollar to determine the "average weekly wage". The "average annual wage" for contribution purposes is the quotient derived by dividing total remuneration reported by all employers subject to contributions by the average number of workers reported for all months by these same employers and if the result is not a multiple of one dollar, rounding the result to the next lower multiple of one dollar. [1977 ex.s. c 33 § 2; 1975 1st ex.s. c 228 § 1; 1973 6.]

Effective dates——Construction—— lowing RCW 50.04.030.

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

Effective date——1973 c 73: See note following RCW 50.04.030.

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

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

Chapter 50.06
TEMPORARY TOTAL DISABILITY

Sections

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

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

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

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

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

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

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

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

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

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

50.06.050 Use of wages and time worked for prior claims——Effect. The fact that wages, hours or weeks worked during the special base year may have been used in the computation of a prior valid claim for unemployment compensation shall not affect a claim for benefits made pursuant to the provisions of this chapter; however, wages, hours and weeks worked used in computing entitlement on a claim filed pursuant to this chapter shall not be available or used for establishing entitlement [1975 1st ex.s. c 228 § 11.]

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

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

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

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

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

Chapter 50.08
ESTABLISHMENT OF DEPARTMENT

Sections

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

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

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

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

"Application for initial determination" defined: RCW 50.20.140.

"Claim for benefits" defined: RCW 50.20.140.

"Claim for waiting period" defined: RCW 50.20.140.

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

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

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

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

No benefit year will be established unless it is determined that the individual earned wages in "employment" in not less than six hundred eighty hours of the individual's base year: *Provided, however,* That a benefit unless the individual earned wages in "employment" during the last two quarters of the new base year of not less than six times the weekly benefit amount computed for the individual's new benefit year.

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

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

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

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

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

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

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

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

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

#3

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

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

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

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

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

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

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

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

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

#1

A M E N D M E N T

Offered in the HOUSE By Donley

TO: HB 352

Page 27, after line 3:

Insert a new bill section to read:

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

Renumber remaining bill sections accordingly.

Page 27, line 4:

Delete "This Act applies only"

Insert "Sections 1 - 35 of this Act apply"

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

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

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

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

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

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

50.04.355 Wages, remuneration——Average annual wage——Average weekly wage——Average annual wage for contributions purposes. On or before the fifteenth day of June of each year an "average annual wage", an "average weekly wage", and an "average annual wage for contributions purposes" shall be computed from information for the preceding calendar year including corrections thereof reported within three months after the close of that year by all employers as defined in RCW 50.04.080. The "average annual wage" is the quotient derived by dividing total remuneration reported by all employers by the average number of workers reported for all months and if the result is not a multiple of one dollar, rounding the result to the next lower multiple of one dollar. The "average annual wage" thus obtained shall be divided by fifty–two and if the result is not a multiple of one dollar, rounding the result to the next lower multiple of one dollar to determine the "average weekly wage". The "average annual wage" for contribution purposes is the quotient derived by dividing total remuneration reported by all employers subject to contributions by the average number of workers reported for all months by these same employers and if the result is not a multiple of one dollar, rounding the result to the next lower multiple of one dollar. [1977 ex.s. c 33 § 2; 1975 1st ex.s. c 228 § 1; 1973 6.]

Effective dates——Construction—— lowing RCW 50.04.030.

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

Effective date——1973 c 73: See note following RCW 50.04.030.

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

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

Chapter 50.06
TEMPORARY TOTAL DISABILITY

Sections

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Chapter 50.08
ESTABLISHMENT OF DEPARTMENT

Sections

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

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

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

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

"Application for initial determination" defined: RCW 50.20.140.

"Claim for benefits" defined: RCW 50.20.140.

"Claim for waiting period" defined: RCW 50.20.140.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#3

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

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

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

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

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

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

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

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

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

#1

A M E N D M E N T

Offered in the HOUSE By Donley

TO: HB 352

Page 27, after line 3:

Insert a new bill section to read:

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

Renumber remaining bill sections accordingly.

Page 27, line 4:

Delete "This Act applies only"

Insert "Sections 1 - 35 of this Act apply"

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

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

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

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

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

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

50.04.355 Wages, remuneration——Average annual wage——Average weekly wage——Average annual wage for contributions purposes. On or before the fifteenth day of June of each year an "average annual wage", an "average weekly wage", and an "average annual wage for contributions purposes" shall be computed from information for the preceding calendar year including corrections thereof reported within three months after the close of that year by all employers as defined in RCW 50.04.080. The "average annual wage" is the quotient derived by dividing total remuneration reported by all employers by the average number of workers reported for all months and if the result is not a multiple of one dollar, rounding the result to the next lower multiple of one dollar. The "average annual wage" thus obtained shall be divided by fifty-two and if the result is not a multiple of one dollar, rounding the result to the next lower multiple of one dollar to determine the "average weekly wage". The "average annual wage" for contribution purposes is the quotient derived by dividing total remuneration reported by all employers subject to contributions by the average number of workers reported for all months by these same employers and if the result is not a multiple of one dollar, rounding the result to the next lower multiple of one dollar. [1977 ex.s. c 33 § 2; 1975 1st ex.s. c 228 § 1; 1973 6.]

Effective dates——Construction—— lowing RCW 50.04.030.

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

Effective date——1973 c 73: See note following RCW 50.04.030.

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

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

Chapter 50.06
TEMPORARY TOTAL DISABILITY

Sections

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

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

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

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

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

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

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

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

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

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

50.06.050 Use of wages and time worked for prior claims——Effect. The fact that wages, hours or weeks worked during the special base year may have been used in the computation of a prior valid claim for unemployment compensation shall not affect a claim for benefits made pursuant to the provisions of this chapter; however, wages, hours and weeks worked used in computing entitlement on a claim filed pursuant to this chapter shall not be available or used for establishing entitlement [1975 1st ex.s. c 228 § 11.]

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

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

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

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

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

Chapter 50.08
ESTABLISHMENT OF DEPARTMENT

Sections

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

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

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

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

"Application for initial determination" defined: RCW 50.20.140.

"Claim for benefits" defined: RCW 50.20.140.

"Claim for waiting period" defined: RCW 50.20.140.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#1

A M E N D M E N T

Offered in the HOUSE By Donley

TO: HB 352

Page 27, after line 3:

Insert a new bill section to read:

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

Renumber remaining bill sections accordingly.

Page 27, line 4:

Delete "This Act applies only"

Insert "Sections 1 - 35 of this Act apply"

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

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

(2) has not the right under the provisions of the plan or system or policy of insurance providing for such death benefits to assign such benefits or to receive a cash consideration in lieu of such benefits, either upon his withdrawal from the plan or system providing for such benefits or upon termination of such plan or system or policy of insurance or of his services with such employing unit. [1951 c 265 § 5; 1949 c 214 § 6; 1945 c 35 § 35; Rem. Supp. 1949 § 9998–173. Prior: 1943 c 127 § 13; 194[illegible] c 253 § 14.]

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

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

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

50.04.355 Wages, remuneration——Average annual wage——Average weekly wage——Average annual wage for contributions purposes. On or before the fifteenth day of June of each year an "average annual wage", an "average weekly wage", and an "average annual wage for contributions purposes" shall be computed from information for the preceding calendar year including corrections thereof reported within three months after the close of that year by all employers as defined in RCW 50.04.080. The "average annual wage" is the quotient derived by dividing total remuneration reported by all employers by the average number of workers reported for all months and if the result is not a multiple of one dollar, rounding the result to the next lower multiple of one dollar. The "average annual wage" thus obtained shall be divided by fifty-two and if the result is not a multiple of one dollar, rounding the result to the next lower multiple of one dollar to determine the "average weekly wage". The "average annual wage" for contribution purposes is the quotient derived by dividing total remuneration reported by all employers subject to contributions by the average number of workers reported for all months by these same employers and if the result is not a multiple of one dollar, rounding the result to the next lower multiple of one dollar. [1977 ex.s. c 33 § 2; 1975 1st ex.s. c 228 § 1; 1973 [illegible] 6.]

Effective dates——Construction—— [illegible] lowing RCW 50.04.030.

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

Effective date——1973 c 73: See note following RCW 50.04.030.

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

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

Chapter 50.06
TEMPORARY TOTAL DISABILITY

Sections

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

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

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

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

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

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

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

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

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

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

50.06.050 Use of wages and time worked for prior claims——Effect. The fact that wages, hours or weeks worked during the special base year may have been used in the computation of a prior valid claim for unemployment compensation shall not affect a claim for benefits made pursuant to the provisions of this chapter; however, wages, hours and weeks worked used in computing entitlement on a claim filed pursuant to this chapter shall not be available or used for establishing entitlement [1975 1st ex.s. c 228 § 11.]

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

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

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

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

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

Chapter 50.08
ESTABLISHMENT OF DEPARTMENT

Sections

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

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

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

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

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

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

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

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

No benefit year will be established unless it is determined that the individual earned wages in "employment" in not less than six hundred eighty hours of the individual's base year: *Provided, however*, That a benefit year unless the individual earned wages in "employment" during the last two quarters of the new base year of not less than six times the weekly benefit amount computed for the individual's new benefit year.

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

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

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

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

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

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

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

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

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

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

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

SB 322 CONFERENCE COMMITTEE

Topics under conference:

1) Board IME - more weight than other medical opinions
House CS - page 18, line 20
Senate CS - page 16, line 23

2) Fines for late reporting - "or $100, whichever is greater."
House CS - page 22, line 16 and 26
NOT IN SENATE CS

3) Hearing Preparation - whether to reinsert "all", "all", and "fully"
House CS - page 19, lines 13 and 14
NOT IN SENATE CS

4) Checks drawn on in-state banks
House CS - page 24, line 13
NOT IN SENATE CS

5) Stress language - perceptions/misperceptions
House CS - page 31, line 28
Senate CS - page 29, line 10

Topics under limited free conference:

1) Workplace Safety Program - new language?
   House CS - page 2, line 27
   NOT IN SENATE CS

2) Fine for lack of coverage - $10,000
   House CS - page 14, line 6

3) Determination of gross weekly earnings - delete "projected"
   House CS - page ~~30~~ 29, line 2
   Senate CS - page 26, line 18

4) Rate Reduction or freeze
   House CS - page 32, line 22
   NOT IN SENATE CS

5) Assigned Risk Pool
   House CS - page 2, line 18
   NOT IN SENATE CS

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PROPOSED LANGUAGE FOR RATE REDUCTION

"Notwithstanding AS 21.39.030, rates filed by rating organizations for use in the state of Alaska may not be increased before Jan. 1, 1990.

OK