

ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672
7559 SENATE LABOR & COMMERCE

insurance certificate.

(b) The gross weekly earnings for a person receiving benefits under this section shall be the gross weekly earnings paid a full-time emergency medical technician employed in the city or borough nearest to the place where the injury occurred, or, if the nearest city or borough has no full-time emergency medical technician, at a reasonable figure previously set by the nearest city or borough to make this determination, but in no case may the gross weekly earnings for calculating compensation be less than the minimum wage computed on the basis of 40 hours of work a week.

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

(15) "gross earnings" means periodic payments, by an employer to an employee for employment before any authorized or lawfully required deduction or withholding of money by the employer, including wages [COMPENSATION THAT IS] deferred at the option of the employee and temporary disability compensation for an occupational injury or illness, and excluding irregular bonuses, reimbursement of expenses, expense allowances, and any benefit or payment to the employee that is not fully taxable to the employee during the pay period, except that the total amount of contributions made by an employer to a qualified pension or profit sharing plan during the two plan years preceding the injury, multiplied by the percentage of the employee's vested interest in the plan at the time of injury, shall be included in the determination of gross earnings; the value of room and board if taxable to the employee may be considered in determining gross earnings; however, the value of room and board that would raise an employee's gross weekly earning above the state average weekly wage at the time of injury may not be considered;

(21) "medical stability" means the date after which further objectively measurable improvement or deterioration from the

effects of the compensable injury is not reasonably expected to result from additional medical care or treatment, notwithstanding the possible need for additional medical care or the possibility of improvement or deterioration resulting from the passage of time; medical stability shall be presumed in the absence of objectively measurable improvement or deterioration for a period of 45 days; this presumption may be rebutted by clear and convincing evidence;

(34) "volunteer emergency medical technician" means a person who is certified by the state as an emergency medical technician under AS 18.08 and who provides emergency medical services on a voluntary basis.

Sec. 18. This act takes effect immediately under AS 01.10.070(c)

FEB 22 1991



February 20, 1991

The Honorable Drue Pearce
P.O. Box V
Juneau, AK 99811

Dear Senator Pearce:

I would like to thank you for sharing part of your busy schedule with us last week to address issues of concern to the professional design community. Your support for the statute-of-repose bill introduced by Senator Halford is very much appreciated.

Red [I would also like to express my interest in upcoming Worker's Compensation Legislation. As vice-president of WCCA and an active member of the professional design community, I have some concerns about the lack of issues being addressed by the task force. Please keep me posted.

Should you have any questions on issues pertaining to the design community, do not hesitate to contact myself or Sharon Macklin. Thanks again for your time and support.

Truly yours,

CRW ENGINEERING GROUP

A handwritten signature in cursive script, appearing to read 'W. Van Hemert', written in dark ink.

Willem Van Hemert, P.E.



Post-It™ brand fax transmittal memo 7671 # of pages 3

To	Sharon MacLain	From	Willem Van Hemert
Co.		Co.	
Dept.		Phone #	
Fax #		Fax #	

Rod

WCCA
 c/o Warren Dvorak
 Anchorage School District
 P.O. Box 196614
 Anchorage, Alaska 99519-6614

Re: Design Professional Exclusion

Dear Warren:

Attached is proposed wording to amend Alaska Statute 23, Labor and Worker's Compensation, in regard to exclusion of design professionals as a third party involving construction projects. The proposal language was taken directly from a similar provision in the State of Washington's statutes. Other states with similar language include:

- Connecticut
- Florida
- Hawaii
- Oregon
- Kansas
- Nebraska
- Missouri

Four other states (Maine, South Dakota, North Dakota and Oklahoma) have exclusions for design professionals but the actual wording is substantially different. In fact, we used Oklahoma's approach last year and that seemed to meet with some resistance.

If you have any questions or need more information, please do not hesitate to contact me.

Truly yours,

Willem Van Hemert, P.E.

cc: V. McKinney - HHB

INTRODUCTION

Under the traditional three-legged approach to the design and construction of a facility--owner, architect/engineer and contractor--the respective role of each participant is clearly defined in terms of responsibility and liability exposure.

The old "master builder" concept, in which the designer assumed a significant role in directing the actual construction, was abandoned many years ago. Present day approaches recognize that the architect or consulting engineer, in serving as the design professional, normally has limited activities intended only to evaluate whether or not construction is being performed in accordance with the plans and specifications.

This view of the consulting professional engineer's role is recognized in contract documents published by the Engineers Joint Contract Documents Committee (EJCDC), which note that the role of the engineer is "to observe the progress and quality of the construction to determine in general if the work is proceeding in accordance with the contract documents." Similar language is included in documents published by the American Institute of Architects (AIA). Likewise, standard general conditions governing responsibilities of the contractor make it clear that the contractor is solely responsible for the safety of workers employed both by the contractor and any subcontractors.

While these concepts and the contract language have served the public and design professionals well in past years, recently there have been a number of instances in which consulting professional engineers and architects have been drawn into claims and lawsuits for alleged negligence in connection with construction worker injuries/deaths.

As a result of these kinds of cases, state A/E societies have sought legislation to provide protection from worker injury, third-party claims where the design professional was not involved in the events leading to the injury. Currently, 12 states' have adopted laws providing immunity of the consulting design professional from third party suits except:

1. With regard to the negligent preparation of design plans and specification.
2. When the design professional is contracted to supervise safety practices.

The exceptions provide what may be considered a "loophole" to the extent that the plaintiff may always allege that the injury (or death) was a consequence of negligent plans or specifications. But, even so, the law narrows the claim of an injured employee of the contractor to proof of negligent plans and specifications. The statutes prevent the broader and more general charge of professional negligence by failing to detect dangerous conditions during observation of construction. The recognition and correction of such conditions is the sole responsibility of the construction contractor who has control of the work.

The following states have laws to protect design professionals: Connecticut, Florida, Kansas, Maine, Nebraska, North Dakota, Oklahoma, Oregon, South Dakota, Washington, Hawaii and Missouri.

Add the following section:

Sec. 23.30.016 Action against third person - Immunity for design professional and employees.

- (a) If on account of disability or death for which compensation is payable under this chapter the person entitled to the compensation may not seek damages against a design professional who is a third person and who has been retained to perform professional services on a construction project, or any employee of a design professional who is assisting or representing the design professional in the performance of professional services on the site of the construction project, unless responsibility for safety practices is specifically assumed by contract, the provisions of which were mutually negotiated, or the design professional actually exercised control over the portion of the premises where the worker was injured.
- (b) The immunity provided by this section does not apply to the negligent preparation of design plans and specifications.
- (c) For the purposes of this section, "design professional" means an architect, professional engineer, or land surveyor, who is licensed or authorized by law to practice such profession, or any corporation licensed or authorized by law to practice such profession in the State of Alaska.

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Reply to: Anchorage

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March 5, 1991

David Brangan, District Manager
National Association for the Self-Employed
555 W. Northern Lights Blvd., Suite 201B
Anchorage, Alaska 99503

Re: Alaska regulatory changes
Our File No. 2449-1

Dear Dave:

This letter will confirm our advice to you concerning possible changes to the Alaska Department of Labor regulations defining independent contractors for purposes of workers' compensation. The present regulation, 8 AAC 45.890, sets out a test for determining employee status which can be hard for an independent contractor to meet. For example, if an employer has the right to exercise control over the manner and means to accomplish work, the regulation creates a strong inference that the person doing the work is any employee and not an independent contractor.

Under this regulation, in any doubtful case, an employer would probably take the safe route of considering a person working for him as an employee, thus requiring workers' compensation coverage. I understand this occurs frequently in the trucking industry, although there are many independent truckers who do not consider themselves employees and would prefer to purchase their own separate health and accident coverages, rather than the more expensive and less flexible workers' compensation coverage.

We have forwarded to you copies of the Oregon statutes and regulations concerning this same issue. Oregon has adopted a more flexible approach, allowing many people who consider

Letter to David Brangan
March 5, 1991
Page 2

HUGHES THORSNESS GANTZ POWELL & BRUNDIN
ATTORNEYS AT LAW

themselves independent contractors to avoid the burdens of workers' compensation. I believe Oregon has a large number of independent truckers, and I presume they were in favor of changing the Oregon regulations to give them more options in choosing their own health and accident coverages.

In our opinion, the Alaska Department of Labor should have the authority to rescind its current regulation and adopt regulations similar to those of Oregon. Doing so would require the Department to comply with the Administrative Procedure Act, and give notice of the proposed new regulations to interested parties who then would have the opportunity to comment on them. There certainly appear to be very valid reasons for the Department to review these regulations, however, and because Oregon has already been through the process of changing its own similar regulations, it probably makes sense for the Department to examine the Oregon regulations as a starting point.

If the Department of Labor were to adopt new regulations similar to those in Oregon, then it appears very likely that many independent truckers could indeed qualify as independent contractors. This would remove an expensive burden which we understand many independent truckers want to avoid. The regulations could be drafted in a way to promote or require their obtaining alternative insurance coverages, of the type which you are familiar with and can provide to them.

Whenever new regulations are adopted, they may be subject to different interpretations or to court tests. It appears likely, however, that regulations along the lines of those in effect in Oregon would be upheld as a valid exercise of the Department of Labor's powers, and would be interpreted in a manner allowing independent truckers to purchase individual health and accident coverages, and not be subject to mandatory workers' compensation coverage.

If you have any further questions, please let us know.

Very truly yours,

HUGHES, THORSNESS, GANTZ,
POWELL & BRUNDIN

By:


Timothy R. Byrnes

TRB/10385XYBR

National Association for the Self-Employed®



DAVID BRANGAN
District Manager
555 W. North Lights Blvd., Ste. 201B
Anchorage, AK 99503
(907) 277-5757
(907) 277-6647 FAX

Field Services Office

March 6, 1991

Senator Drew Pierce
Capitol Building, Suite 101
Juneau, AK 99811

Attn: Mr. Rod Mourant

Ref: Proposed regulatory change defining independent contractors.

Dear Mr. Mourant:

The purpose of this memo is to propose regulatory changes which would define what an independent contractor is. This change is necessary in view of the problems now existing for independent truckers (owner/operators) and others due to a lack of definition in this regard.

We would like to see the State of Alaska define the independent contractors similar to the following: (Note; this is practically verbatim to Oregon Statute 701.025 from Oregon Administrative Rules of the Workers Compensation Division).

An individual or business entity that performs labor or services for remuneration shall be considered to perform the labor or services as an "independent contractor" if the standards of this section are met:

(1) The individual or business entity providing the labor or services is free from direction and control over the means and manner of providing the labor or services, subject only to the right of the person for whom the labor or services are provided to specify the desired results;

(2) The individual or business entity providing labor or services is responsible for obtaining all assumed business registrations or professional occupation licenses required by state law or local government ordinances for the individual or business entity to conduct the business;

*Ask Davey
DZUE - to consider
in her bill.
FYI - what does
worry like
think?
SELF-EMPLOYED
REQUEST THIS
MEMORANDUM TO W. P.
Rod*

(3) The individual or business entity providing labor or services furnishes the tools or equipment necessary for performance of the contracted labor or services;

(4) The individual or business entity providing labor or services has the authority to hire and fire employees to perform the labor or services;

(5) Payment for the labor or services is made upon completion of the performance of specific portions of the project or is made on the basis of an annual or periodic retainer;

(6) The individual or business entity providing labor or services is registered under this chapter, if the individual or business entity provides labor or services for which such registration is required;

(7) Federal and state income tax returns in the name of the business or a business Schedule C or farm Schedule F as part of the personal income tax return were filed for the previous year if the individual or business entity performed labor or services as an independent contractor in the previous year; and

(8) The individual or business entity represents to the public that the labor or services are to be provided by an independently established business. Except when an individual or business entity files a Schedule F as part of the personal income tax returns and the individual or business entity performs farm labor or services that are reportable on Schedule C, an individual or business entity is considered to be engaged in an independently established business when four or more of the following circumstances exist:

(a) The labor or services are primarily carried out at a location that is separate from the residence of an individual who performs the labor or services, or are primarily carried out in a specific portion of the residence, which portion is set aside as the location of the business;

(b) Commercial advertising or business cards as is customary in operating similar businesses are purchased for the business, or the individual or business entity has a trade association membership;

(c) Telephone listing and service are used for the business that is separate from the personal residence listing and service used by an individual who performs the labor or services;

(d) Labor or services are performed only pursuant to written contracts;


(e) Labor or services are performed for two or more different persons within a period of one year; or

(f) The individual or business entity assumes financial responsibility for defective workmanship or for service not provided as evidenced by the ownership of performance bonds, warranties, errors and omission insurance or liability insurance relating to the labor or services to be provided;

(g) The individual or business entity can be expected to carry its own accident burden;

Contract carriers in this case must be assured that they will not have to purchase workers compensation insurance for themselves as an owner/operator. The contract carrier has available at the present time a private health carrier that will cover them 24 hours/day with health, disability and life insurance. This is a great savings to the small business owner (contract carrier) and relinquishes the burden by the shipper to provide workers compensation coverage on a contract carrier. By providing the definition of an independent contractor, this will take out the intimidation of the workers compensation carriers to the shipper or independent contractor to prove that the independent contractor should not be added to the shipper's WC program. This is vitally important to a large segment of the Alaska trucking industry. Your timely consideration of this matter is greatly appreciated.

Sincerely

A handwritten signature in cursive script that reads "David Brangan". The signature is written in dark ink and is positioned above the printed name and title.

David Brangan
District Manager

cc Senator Virginia Collins, attn: Ms. Nancy Spear
Representative David Finkelstein

FAX TRANSMITTAL

DATE: 3/7/91

TO: Rod Mourant

COMPANY: Senator Barce's Office

LOCATION:

FAX #: 463-5352

FROM: MARY PIERCE

4000 Old Seward Highway, Suite 203
Anchorage, Alaska 99503
Telephone: (907) 563-3414
FAX#: (907) 562-7804

Page 1 of 1

RE:

Rod,

Co-Chair Management - Mary Pierce - NOKIA
Co-Chair Labor - Kevin Dougherty - Laborers

Labor

Management

Matt Grotskie - Iron Workers

Elaine Taylor - Taylored Constru

Jeff Wertz - Machinists

Dick Pattenash - Unit Co.

Steve Boyd - Electricians

Richard Whitbeck - Mammoth

Joe Thomas - Laborers 942

Terry McCarty - Chugach Fore
Products

Mary

IF YOU DO NOT RECEIVE A COMPLETE AND LEGIBLE COPY OF THIS FAX PLEASE CALL THE MICA OFFICE NUMBER ABOVE

March 8, 1991

Drue -

Re: Worker's Compensation

I spoke with Mary Pierce. She gave me the same answers as everyone else. Thought the proposed legislation was a package deal and removal of any section would break the deal and perhaps cause the ad hoc committee to lobby against subsequent legislation. Unlike Cattanach, she was sure of the source of the additional sections.

Rod

NFIB Alaska

National Federation of
Independent Business

March 13, 1991

The Honorable Drue Pearce
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Dear Senator Pearce:

The legislative agenda of NFIB/Alaska is determined by our ballot. The ballot is our annual poll of our membership on a series of issues deemed critical to small business. A majority vote, of the members in response to the poll, sets our policy and position on legislative issues.

It is my undersatnd that a bill might be introduced regarding workers' compensation through the Senate Labor and Commerce Committee. I would like to share with you the results of the 1991 NFIB/Alaska ballot question regarding workers' compensation.

Are you having trouble obtaining workers' compensation insurance coverage?

Yes 7.3% No 89.3% Undecided 3.4%

Did your workers' compensation premium increase in the past year?

Yes 59.1 No 33.6 Undecided 7.3

If you answered "Yes" to the question above, by what percent did it increase?

Increase		Increase	
0 to 10%	43.1%	26 to 50%	10.9%
11 to 25%	40.9%	More than 50%	5.1%

State Office
9159 Skywood Lane
Juneau, AK 99801
(907) 789-4278

Did your workers' compensation premium decrease in the past year?

Yes 8.3% No 83.8% Undecided 7.9%

If you answered "Yes" to the question above by what percent did it decrease?

Decrease		Decrease	
0 to 10%	62.5%	26 to 50%	4.2%
11 to 25%	33.3%	More than 50%	0.0%



The Guardian of
Small Business

Page: 2

Have any of your employees filed a successful workers' compensation claim in the past two years?

Yes 28.8% No 69.6% Undecided 1.6%

During the year, the field staff of NFIB/Alaska visits literally thousand of small businesses in the state. One recurring theme our staff continues to hear is concern with the increasing cost of insurance. On the 1991 NFIB/Alaska ballot we conducted this extensive poll on Workers Compensation Insurance to determine the current extent of any problems.

The members that wrote comments about Workers Compensation Insurance, expressed a sense of frustration. Although they had no claims or a few minor claims, their cost had increased. Enclosed are the unedited comments from our members. NFIB/Alaska would urge you to keep in mind cost when considering any proposals to change the Workers' Compensation statutes. Our members have experienced an increase in premiums and any further cost increase would be very detrimental to small business.

NFIB/Alaska hopes this information regarding the views of small business owners on this issue will be useful to you. If you have any questions regarding this information, please do not hesitate to contact me.

Sincerely,



Resa Jerrel
NFIB/Alaska
State Director

Enclosure

cc: Commissioner Nancy Usher

1991 BALLOT COMMENTS

WORKERS COMP

It's tough these days to run a small business. With rising insurance costs & overhead & trouble collecting for work done, it's been a troubling year. Service - Fairbanks

My biggest problems involve insurance (Gen liability, workers comp & health). Something must be done - we small contractors cannot survive much longer with these escalating prices. Construction - Anchorage

The cost of workers comp. and general liability insurance has been prohibitive to us. We have been forced to become less "professional" in our pursuit of a livelihood due to the cost of administration, taxes, and insurance. There is a "hump of success" which we have not been able to scale and so we do our best at the bottom of it. Service - Homer

Rate Increase? Not sure - Premiums are small part of overall "rip-off" of this program. Construction - Cordova

Workman's Comp ins rates (minimum) is much too high for small seasonal business. Service - Juneau

Re insurance: Our WC has gone down - but because we have fewer employees. WC rates have increased 0-10% looking at rates per \$100 of payroll. Retail - Juneau

Item 9 no problem to obtain, but, rates are astronomical. Construction - Soldotna

We have not had trouble but carriers are limited therefore premiums are high. Service - Big Lake

All clients with employees have experienced increases 10-20%. Service - Juneau

Our workmans comp increased from less than a \$100 per year to almost \$600 per year in 1987. We are one of the unfortunate business that have such a low accident record that no one will cover us, so we are tossed in a pool with the highest accident records, that also no one wants to cover. Retail - Palmer

We have a small business. We had a gas station to run, but because of rising cost of insurance, and trying to keep good help, we leased it out so we have an easier work load. We still pay thru the nose for insurance and we only have 1 employee full time and one part-time helper for a fuel oil business, small engine shop and bulk fuel station. Now the cost of fuel going up and the federal tax up again, our cost has to go up again, which makes everything harder. The rate we're going sometimes between insurance & taxes I think we're working this hard for the insurance company and the government and it doesn't seem fair to small businesses like us. The one time we tried to use workmens comp. when a worker got hurt in gas station it was such a hassle we ended up paying ourselves. "Accidents do happen" but you wouldn't believe it they were no help at all. I wish we had a choice of insurance coverage it would straighten things out for people like us. Retail - Wasilla

I don't hire anymore because of the expense of worker's comp.
Service - Juneau

We have no employees; We are not able to afford it. Service -
Fairbanks

Something needs to be done with the workmans comp. laws in Alaska.
The premiums are extraordinarily expensive. And the coverage med
allowances very poor. It appears that the system is easy to abuse
and consequently, very expensive to the employer. Service -
Anchorage

Rates went down but they increase by experience multi enough to
off set any decrease - 1 employee had a back injury which he saw a
doctor for but did not miss any work as a result. Retail - Big
Lake

We hire seasonal employees and are unable to obtain seasonal
workmans comp. It is a flat fee for one year - not quite
reasonable for a business adding employees for 4 or less months.
Tourism - Kodiak

Workers compensation - Workers Comp. is outrageously high. It
should be based on hours worked not on money earned. If one man
is better than some of the others I pay him more per hour. Does
this make him a greater risk? Retail - Cordova

Need to change worker's comp so premiums are based on hours worked
not payroll. Service - Fairbanks

No trouble obtaining, its the cost that is the problem! Retail -
Talkeetna

This was the 1st year I had an employee (one) and never did end up
with workmans comp Insurance! I tried, but I had the impression I
was being given the run-around after it. Dragged on for a month
and then quoted a premium of over \$1,400 !! for a 3-month seasonal
employee. Being a seasonal employer (charter boat business) I
think it unfair to have to pay an annual premium. Whittier

Because of the cost of W.C., we have chosen not to have employees
and expand our business. Inorder to have emp. and W.C. we would
have to charge at least 50% more for our product. If we did that,
we would just have to close the doors. The local mentality of
getting it down south cheaper would over come any reasonableness
concerning shopping locally, keep the money in town. So its too
bad - because we could hire two people to do all the work more
efficiently. Retail/Service - Juneau

Workers comp rates have created a major problem for us with little
we can do about it. We had one claim which the employee tried to
milk until it was obvious to everyone and it got to the point that
I wanted our carrier to file some kind of counter claim for fraud
and they said it was too expensive and too much bother so they
just paid everything and in turn our rates jumped higher. I feel
they should pursue false claims to prevent others from doing the
same thing. One improvement might be to be able to have employees
pay a percentage of w/c and these wrongful claims would effect
them also. Service - Juneau

After 3 years with the same workers' compensation carrier, they declined to to renew our policy. Reason for non-renewal, "underwriting policy". Reason given by our insurance agent was our annual premium is not large enough. During the past 3 years, the carrier paid 2 small claims totalling approx. \$600.00. Our premiums exceeded \$30,000.00 during this period. Service - Anchorage

I have a real hard time believing in the 25% surcharge, charged by Work Comp Insurance companies because I have a new company. I also have a problem with their quote overhead. They have the finest office space money can buy, their own library, pictures hanging on the wall that are very expensive. If they operated in a efficient way I would have no complaints. We tell on person in the office whats going on with our business + someone else in their office sends us a bill + expects us to pay even though it is not correct. After a few phone calls + letters, they finally catch on. One hand doesn't know what the others doing. The bottom line is overhead is driving my cost up. Service - Anchorage

As an indication of the unjustifiable cost: our workmens' compensation is 17% of wage for a hired hand. The same rate applies to policemen. The reason is said to be because we carry firearms. But policemen carry firearms because people try to shoot and kill the. I've never had a wild animal shoot back at me. This workmens compensation rate is a totally unjustified ripoff. Service - Palmer

Employee file successful claim past 2 years? The successful claim was by the wife of a 39 year old man who had worked for us 1 hour to having a fatal heart attack. Our insurance company awarded nearly \$300,000 without advising us of their intent. As an added not the 1 hour of work also included a 20 minute safety meeting. Construction - Wasilla

Rate Decrease? On workers comp, our insurance rates only went down because we were able to get a group rate through our trade association. Had we continued with the same insurer, our rates would have been about the same. Retail - Juneau

Workmans Comp is the most serious issue facing Alaska businesses. Service - Anchorage

We are semi retired now and only my wife and I work at the business. The last year we had employees (1988) our Workmen's Comp went up and although we had only 2 accidents in 10 years our carrier dropped us and our agent had to go to someone else. Someone should do something about insurance coverage on all levels, Workman's Comp, Liability and Health Insurance. They are all out of site for the average small businessman as well as on a personal level. Service - Ketchikan

A 200% increase. With the increase in both Liability & Workmens Comp. we're seriously considering ceasing business. Service - Anchorage

No change in Workers Comp - Because we are down to two employees - Retail - Kenai

My agent informed me our carrier, Ak. Indust. Indem., is pulling out of Alaska. He assured me he'll find a new carrier by renewal time. Service - Soldotna

I feel the main concerns small business has in Alaska at this time, is lack of financial help from the lending institutions and the fast rising costs of Insurance. Service - Kenai

I am self employed and no longer have employees but feel the rates of worker's comp versus their exposure to liability is unfairly high. I believe that if the common man knew what business insurance was costing him in higher prices for goods and services they would back legislation to limit law suits and initiate more no fault laws. Service - Eagle River

MAR 18 1991

Rod. billite

WCCA

Workers' Compensation
Committee of Alaska

March 13, 1991

The Honorable Druæ Pearce, Chair
Senate Labor and Commerce Committee
Alaska State Legislature
P.O. Box V (MS 3100)
Juneau, AK 99811

Dear Senator Pearce:

It has come to my attention that there is some misunderstanding of the position of the Workers' Compensation Committee of Alaska (WCCA) regarding the proposed legislation being submitted to you by the Labor/Management Ad Hoc Committee. To clarify this, permit me to state the position taken by the WCCA Board of Directors at our March 7th Board meeting.

The WCCA has, and continues to fully support the Labor/Management Ad Hoc Committee and the deliberative process they follow in developing needed improvements in the Alaska Workers' Compensation Act. This committee consists of 5 members representing Alaska employers and 5 members representing organized labor. Because it is a balanced committee, this process has worked exceedingly well in the past, both for employers and workers, and we feel that it is essential for this process to be preserved.

The proposed legislation that has been submitted to you is, for the most part, the same as CSSB 508 sponsored by Labor and Commerce, offered on April 24, 1990 and amended April 25, 1990. The current version contains some clarifications in language and there have been three additional sections intended to eliminate some ambiguities in the current act and provide additional protection for employers and workers. Last year the WCCA supported CSSB 508 and we unconditionally support the revised version in its entirety as submitted to you.

This package of revisions contains some items of primary importance to employers, i.e. Sections 4, 10, 12, 17, and the legislative intent statements; some are important to Labor, i.e. Sections 9 and 11; and some others were requested by the Division of Workers' Compensation, i.e. Sections 1 - 3 and 5 -

P.O. Box 200631
Anchorage, Alaska 99520

have been thoroughly discussed and agreed to by the representatives of both management and labor and by the Board of WCCA. It would be a grave disservice to the good faith negotiating process as well as Alaska employers and workers to split the package into multiple bills, or to strip provisions from this one. After the bill has been introduced, any legislator who feels that a modification is in order may do so in committee.

For these reasons, the Board of WCCA, on behalf of all our member employers, urges the Senate Labor & Commerce Committee to proceed with the sponsorship of the proposed legislation as submitted to you by the Labor/Management Ad Hoc Committee.

Sincerely,

A handwritten signature in cursive script, appearing to read "Warren L. Dvorak", written in dark ink.

Warren L. Dvorak
President

WLD:mse

cc: Mary Pierce, Co-Chair, Ad Hoc Committee
Kevin Dougherty, Co-Chair, Ad Hoc Committee

Alaska State Legislature

Senator Druce Pearce, Chair
Senator Virginia Collins, Vice Chair
Senator Dick Eliason
Senator Rick Halford
Senator Jay Kerttula



SENATE LABOR AND COMMERCE COMMITTEE

WHILE IN JUNEAU
P.O. BOX V
JUNEAU, ALASKA 99811
(907) 465-3844

3111 C STREET, SUITE 150
ANCHORAGE, ALASKA 99504
(907) 561-2018

TO: Mike Ford, Legislative Legal Counsel
Division of Legal Services

FROM: Rod Mourant, Committee Aide
Senate Labor & Commerce Committee

DATE: March 14, 1991

RE: Proposed Worker's Compensation Legislation

Mike, please draft a worker's compensation bill using the attached Worker's Compensation Ad Hoc Committee recommendation as the guide. Please show the Senate Labor & Commerce Committee by Request as the sponsor.

We need this ASAP. Thank you.

ARK LABOR/Mgt. WORK COMP AD HOC

Amendments to 3/14/91 WORK DRAFT 7-LS1004\A

Section 1 (a)

CD 8

① Add sentence to read, "No change is intended regarding liability for conduct not concerning safety inspections or safety advisory services."

② Section 1 (b) should read:

It is the purpose of sect. 18 of this Act to amend AS 23.30.26. (15) to reaffirm the original intent of the 1982 amendment to include prior ~~total~~ temporary total disability payments within the definition of gross wages.

③ Amend Section 1 (c) as Dick Cottanach already indicated) 1N

④ Amend Section 6 Line 20 as D. Cottanach already indicated)

(4b) See 16 1N

5) Section 10(b)

Redraft Lines 9-12 to read:

Compensation required under this section commences when the employee's health insurance provided by the employer's contribution ceases and shall continue for 18 months, or until the employee is no longer receiving compensation described in (a) of this section, whichever period is shorter.

6) Question on why M. Ford changed this?

See 10 Part c

HAD 4 ONLY 10 (C) (D) 2

From the desk of:

Senator Drue Pearce

Rod.

Run this by the
Ad hoc crowd ✓ plus

Charlie filler ✓

Pat Smutz ✓

+ DOLabor. ✓

COLLINS ✓

It's my intention to

drop it in Friday!

dp

(so you'll need to get
a final for Rick)



TELECOPY COVER SHEET

SENATOR DRUE PEARCE'S OFFICE

VOICE (907) 465-4993 FAX (907) 463-5352

To: PAT SMUTZ Fax: 586-5658

Attn: _____ Phone: _____

Transmitted by: ROD MOURANT Date: 3/15/91

Re: WORKER'S COMPENSATION DRAFT

Comments: THIS IS COVER MEMO I FAILED
TO TRANSMIT WITH LEGISLATION.

Number of Pages: 3 Including Cover Sheet.





TELECOPY COVER SHEET

SENATOR DRUE PEARCE'S OFFICE

VOICE (907) 465-4993 FAX (907) 463-5352

To: PAT SMUTZ Fax: 586-5658

Attn: _____ Phone: _____

Transmitted by: ROD MOURANT Date: 3/15/91

Re: WORKER'S COMPENSATION DRAFT LEG

Comments: PLEASE SHARE WITH APPROPRIATE

PARTIES THE SENATOR WOULD LIKE

TO INTRODUCE ON MONDAY, SO NEED

COMMENTS / CONCERNS ASAP.

THANKS PAT.

Rod

Number of Pages: 12 Including Cover Sheet.





TELECOPY COVER SHEET

SENATOR DRUE PEARCE'S OFFICE

VOICE (907) 465-4993 FAX (907) 463-5352

To: COMMISSIONER USERR Fax: 465-2784

Attn: _____ Phone: _____

Transmitted by: ROD MOURANT Date: 3/15/91

Re: WORKMAN'S COMP LEGISLATION

Comments: CONRA MAILED FOR DRAFT

LEGISLATION PREVIOUSLY TRANSMITTED

Number of Pages: 3 Including Cover Sheet.





TELECOPY COVER SHEET

SENATOR DRUE PEARCE'S OFFICE

VOICE (907) 465-4993 FAX (907) 463-5352

To: COMMISSIONER USERRA Fax: 465-2784

Attn: D O L Phone: 465-2700

Transmitted by: ROD MOURAY Date: 3/15/91

Re: WORKER'S COMPENSATION LEGISLATION DRAFT

Comments: Nancy

WOULD YOU LOOK OVER? YOUR

COMMENTS AS WELL AS STAFF WOULD

BE APPRECIATED. TIME SCHEDULE IS

TIGHT! THE SENATOR WOULD LIKE TO

DROP THIS IN ON MONDAY.

I WILL BE IN ALL DAY

SATURDAY. THANKS Rod

Number of Pages: 12 Including Cover Sheet.





TELECOPY COVER SHEET

SENATOR DRUE PEARCE'S OFFICE

VOICE (907) 465-4993 FAX (907) 463-5352

To: DICK CATTANACH Fax: 522-3464

Attn: _____ Phone: 349-4568

Transmitted by: ROD MOURANT Date: 3/15/91

Re: WORKER'S COMP DRAFT LEGISLATION

Comments: THE SENATOR WOULD APPRECIATE

COMMENTS AND CONCERNS OF AD HOC

COMMITTEE. TIME IS OF THE

ESSENCE. WOULD YOU PLEASE GET

BACK ASAP. I WILL BE IN

ALL DAY TOMORROW.

Rod

Number of Pages: 14 Including Cover Sheet.



WORK ORDER REQUEST FORM

W.O. [17] LS-1004

KEYWORDS: WORKERS' COMPENSATION ASSIGNED: Ford

REQUEST FOR: New Bill TAKEN BY: Barnes

SUBJECT: Workers' Compensation

REQUESTED FOR: SC SL&C BY: Rod Mourant PHONE: 465-3844

DELIVER TO: Sen. Pearce, Cap 101

INSTRUCTIONS: Draft workers' compensation bill using the attached Workers' Compensation Ad Hoc Committee recommendation as a guide.

OBTAIN	SPECIAL DRAFTING INSTRUCTIONS ATTACHED []
	AUTHORIZED TO CONFER WITH _____ _____
	RETURN _____
	_____ TO REQUESTOR
	APPROVED: <input checked="" type="checkbox"/> DIRECTOR, LEGAL SERVICES

REVIEWED _____	SPECIAL INSTRUCTIONS to TYPING/PROOFING
IN <u>03/14/91</u> DUE _____	By Request _____
TYPED: Draft _____ Date _____	_____
Final _____ Date _____	_____
PROOFED _____ DELIVERED _____	Request for DRAFT



Alaska National INSURANCE COMPANY

A policy of service and protection

March 15, 1991

Mr. Charlie Miller
Juneau, Alaska 99811

Dear Charlie:

I believe that the following changes should be made to the draft workers' compensation bill:

Section 23.30.232

Insert "or failing to perform" after "performing" on line 31.

This additional language is used in the intent section (Section 1) and should also be included in Section 16 to avoid any misunderstanding.

Section 23.30.047 (b) and (c)

The word, "compensation" appears four times in these two sub-sections. The word, "payments" should be substituted for "compensation". There may be a subtle distinction in the terms, but the difference is important.

Section 23.30.041 (k) (2)

The phrase, "and has requested reemployment benefits" should not have been deleted. There are financial implications without it.

Section

I believe the reference to Section 11 should be to the new Section 11.

While I favor all of the above changes, the most critical one is to Section 23.30.232.

Yours truly,

A handwritten signature in dark ink, appearing to read "James E. Pfeifer".

James E. Pfeifer
President

Alaska State Legislature

Senator Drue Pearce, Chair
Senator Virginia Collins, Vice Chair
Senator Dick Eliason
Senator Rick Halford
Senator Jay Kerttula



WHILE IN JUNEAU
P.O. BOX V
JUNEAU, ALASKA 99811
(907) 465-3844

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ANCHORAGE, ALASKA 99504
(907) 561-2018

SENATE LABOR AND COMMERCE COMMITTEE

TO: Mike Ford, Legislative Counsel
Division of Legal Services

FROM: Rod Maurant, Legislative Aide
Senate Labor & Commerce Committee

DATE: March 18, 1991

RF: Changes to Draft Legislation 7-LS1004/A

Mike, on page 1 line 11, please review this language to determine if it is consistent with the legislative intent:

"Sec AS 23.30.265(21). It is the intent of the legislature that the presumption of compensability in AS 23.30.120(a)(1) continue to be applied only to the question of whether an injury is related to the employment."

If it is not consistent, please redraft this section.

Pg 2 ln 22-24, section (7) seems to imply more than just notification, which is its intended purpose. Please clarify.

Pg 7 lns 7, 9, 11, 13 payments were not intended to be "compensation" but rather just payments of benefits. Language not indicates benefits to be compensation. Please delete the word "compensation" and insert "payment".

Pg 9 ln 31 please redraft to read:

"for civil damages as a result of an act or omission in performing or failing to perform a workplace safety inspection".

On the second page of your March 14th cover memorandum for this draft legislation you speak to deleting "and has requested reemployment benefits" in AS 23.30.041(k)(2) as duplicative. Because its deletion might result in duplicate payments, please reinsert this language.

One final note, pg 1 Section 1. shouldn't it apply to sections 16, 18, and 19 rather than sections 11, 18, and 19?

Please redraft ASAP. Thanks.

*Does ANY
- TO THIS
CALCULATED*

(NO)

*NOT JUST
NOTIFICATION
IF'S DUTY*

OK

*REPAIR
IN*

OK

- 1) Problems with draft - after legal did.
- 2) Ad hoc group sent 2 sectional analysis - concern changing what they wanted.
- 3) P7, Section 10, line 14
"or" s/b "for" type
Cobra extension under fed law needs to be reinserted.
- 4) p8 section 12, line 12 put "reasonable" back before costs
- 5) 3 amendments introduced & rescinded
- 6) fiscal note should not exist -
Division of Insurance should have additional text
- 7) rehab staff - Division

fight on Ad hoc still same (Dick + Mary)
Elaine Taylor - wec A
night members should represent all the employees -
feel their position is

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

P.O. Box Y, Juneau, Alaska 99811
(907) 465-3867 or 465-2450
FAX (907) 465-2029

Deliveries to: 240 Main Street
Court Plaza, Room 500
Mail Stop 3101

MEMORANDUM

March 14, 1991

SUBJECT: Workers' compensation (Work Order No. 7LS1004/A)

TO: Senator Drue Pearce

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

I wanted to point out several changes in the attached draft from the material you sent to us. First, the language in AS 23.30.041(k)(6) has been rewritten to provide certain extended benefits in the event of controversion or appeal by an employer. The provision requiring the employee to be successful in defending the controversion or appeal was deleted, in that the language failed to indicate what would occur if the appeal was decided in favor of the employer.

Second, the language contained in Sec. 5, regarding extending the exclusive liability of an employer to a carrier, insurance agent or trade association that provides workplace safety inspections has been moved to a new section, section 16. The submitted language would have added a definition of "employer" to the exclusive liability provision contained in AS 23.30.055. As written, the definition raised several serious problems. It appears that the definition is intended to give the carrier, insurance service agent or trade association similar treatment as an "employer" in determining liability for injuries to an employee. However, the following issues were raised by this approach:

1. While the definition attempts to link safety inspections with the extension of protection against liability, the definition as written provides protection when the carrier, insurance service agent, or trade association "provides or fails to provide safety inspections". In short, the link to safety inspections is confusing at best, and perhaps nonexistent. Whether a carrier requires a safety program or not, the carrier is considered an "employer" under this language.

2. The inclusion of the carrier, service agent, and trade association as an "employer" may create additional liability for these parties. Under AS 23.30.095, an "employer" is not protected when the employer fails to secure payment of workers' compensation as required by law. Therefore, the carrier, service agent, or trade association may

find themselves named as parties to a lawsuit, by virtue of being considered the "employer" of a person whose actual employer failed to secure proper workers' compensation. This language would not provide additional protection from negligent, or intentional acts of misconduct, other than is provided to an employer.

3. Who is the actual "employer" of a person is sometimes intensely litigated. This kind of change to the law is confusing, and an invitation to additional litigation.

If the whole point of the definition is to provide immunity when a safety inspection is done, then a separate section establishing that immunity is simpler and a lot clearer. This is the approach taken in section 16.

Finally, in AS 23.30.041(k)(2) the phrase "and has requested reemployment benefits" was deleted. The language appeared to duplicate a provision already contained in the first sentence of the section.

If I may be of further assistance, please contact me.

MFF:mi
91-052.mai

Alaska State Legislature



Senator Druce Pearce, Chair
Senator Virginia Collins, Vice Chair
Senator Dick Eliason
Senator Rick Halford
Senator Jay Kerttula

SENATE LABOR AND COMMERCE COMMITTEE

DRUR - FY I
ok J Rod

WHILE IN JUNEAU
P.O. BOX V
JUNEAU, ALASKA 99811
(907) 465-3844

3111 C STREET, SUITE 150
ANCHORAGE, ALASKA 99504
(907) 561-2018

let's get read
across.

TO: Mike Ford, Legislative Counsel
Division of Legal Services

FROM: Rod Mourant, Legislative Aide
Senate Labor & Commerce Committee

DATE: March 18, 1991

RE: Changes to Draft Legislation 7-LS1004/A

Mike, on page 1 line 11, please review this language to determine if it is consistent with the legislative intent:

"Sec AS 23.30.265(21). It is the intent of the legislature that the presumption of compensability in AS 23.30.120(a)(1) continue to be applied only to the question of whether an injury is related to the employment."

If it is not consistent, please redraft this section.

Pg 2 ln 22-24, section (7) seems to imply more than just notification, which is its intended purpose. Please clarify.

Pg 7 lns 7,9,11,13 payments were not intended to be "compensation" but rather just payments of benefits. Language not indicates benefits to be compensation. Please delete the word "compensation" and insert "payment".

Pg 9 ln 31 please redraft to read:

"for civil damages as a result of an act or omission in performing or failing to perform a workplace safety inspection".

On the second page of your March 14th cover memorandum for this draft legislation you speak to deleting "and has requested reemployment benefits" in AS 23.30.041(k)(2) as duplicative. Because its deletion might result in duplicate payments, please reinsert this language.

One final note, pg 1 Section 1. shouldn't it apply to sections 16,18, and 19 rather than sections 11,18,and 19?

Please redraft ASAP. Thanks.

March 16, 1991

Drue -

Re: Worker's Comp

I received feed back from Charlie Miller, James Pfeifer, Dick Cattanach and Kevin Dougherty. There corrections and comments were virtually identical. I have drafted the attached memo to Ford making the changes they requested.

With your permission, I'll finalize.

Rod

DICK SAID THAT VIRGINIA AGREED
WITH THESE CHANGES BUT WANTED
MORE. I HAVEN'T SPOKEN WITH HER.

3/18/91

DRUE -

I SENT MEMO TO MIKE FORD
REQUESTING A FINAL WITH CHANGES.

March 20, 1991

Drue -

Re: Worker's Comp Legislation

Kevin Daugherty faxed some additional changes to the Ad hoc committee legislation that he says is vital and that all parties agree to. I have tried to reach Dick Cattanach or Mary Pierce to confirm. Neither is in. I also left a message for Charlie Miller to call.

Kevin says that changes need to be made prior to introduction to avoid controversy.

Rod

I JUST SPOKE WITH DICK. HE SAID
THAT THE CHANGES ARE NEEDED AND
AGREED TO BUT COULD BE DONE
AS AMENDMENTS IN L+C OR SPONSOR
SUBSTITUTE.

Rod

SENATE COMMITTEE REPORT
FIRST COMMITTEE OF REFERRAL

DATE: 3/20/91

FURTHER:

Date of 5-Day Notice: 3-28-91
(in accordance with Uniform Rule 23)

DATE TURNED
INTO OFFICE: _____

L&C Committee considered SB 219

Workers' compensation; efd.

and recommended:

- replace with _____ CS SB 219 (L & C) same title
- attached amendment(s) new title
- _____ letter of intent adopted

do pass

do not pass

no recommendation

individual recommendations

further referral to _____

ATTACHES NEW FISCAL NOTE(S):

Department(s)/Date:

Department(s)/Date:

fiscal note(s) LABOR/4-4-91
SB

zero fiscal note(s) COMM/4-29-91
LABOR/4-22-91 & CS

appropriation-no fiscal note

Governor's bill w/fiscal note

SIGNING DO PASS:

OTHER RECOMMENDATIONS:

[Signature]

[Signature]

[Signature]

[Signature] - 10 Pass

Chair: Signature and Recommendation

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

P.O. Box Y, Juneau, Alaska 99811
(907) 465-3867 or 465-2450
FAX (907) 465-2029

Deliveries to: 240 Main St.
Court Plaza, Room 5
Mail Stop 31

MEMORANDUM

March 28, 1991

SUBJECT: Workers' compensation - (SB 219)
TO: Senator Drue Pearce
FROM: Michael F. Ford *M.F.*
Legislative Counsel

The following is a section by section analysis of SB 219:

Section 1 - Purpose of sections 16, 18, and 19.

Section 2 - Changes the period covered by the reemployment benefits report submitted by the administrator. ~~Adds a new duty to monitor activities of medical managers.~~ *Adds to the administrator's duty to monitor the disclosure of the medical manager created in Section 9.*

see attached! Section 3 - Requires the administrator to review the board's case file and determine if the employee is unlikely to return to work in the same job, before selecting a rehabilitation specialist and performing an eligibility evaluation.

see attached! Section 4 - Requires employee injuries be diagnosed by a licensed physician, or in the case of muscular, skeletal, or neurological injuries, by a licensed physician or licensed physical or occupational therapist.

Section 5 - Requires the rehabilitation specialist to certify that the reemployment plan meets the requirements imposed under AS 23.30.041(h). Requires amendment of a plan that does not meet statutory requirements, and prohibits an additional charge by the rehabilitation specialist for amending the plan. *unless approved by rehab administrator*

see attached! Section 6 - Provides for payment of compensation to an employee eligible for reemployment benefits and establishes the type of compensation to be paid. Limits benefits related to the reemployment plan to two years, except when the claim is controverted or appealed.

Section 3 - provides the administrator with the authority to review the file and determine ^{whether} an employee ~~is~~ eligible for an eligibility evaluation. The purpose of this amendment is to codify the rehabilitation administrator's ~~current~~ practice.

Section 4 - ~~adds~~ ^{for purposes of vocational rehabilitation purposes} authority for licensed physical or occupational therapist to determine physical capacities of employees in the case of muscular, skeletal or neurological injuries.

Section 6 - This provides for payment of 60% of the employee's spendable weekly wage for the time between reaching medical stability but before receiving an impairment rating. ^{except for the first 30 days} payments during this time will be offset against the permanent impairment rating.

In addition if a controversion or appeal of the employee's claim delays completion of rehabilitation the employer shall pay 60% of the spendable weekly wage during this period and the two year limit is tolled. This payment will not be offset against

Senator Drue Pearce

March 28, 1991

Page 2

Section 7 - Provides that the cost of the reemployment specialist shall be paid by the employer, may not be included in the cost of the reemployment plan, and limits fees ~~and~~ charged by the reemployment specialist.

the board to compare fees and determine the reasonableness of charges by the reemployment specialist

Section 8 - Definition. *of Medical Manager added*

Section 9 - Requires the medical manager to send certain notice to the employee, employer, and the employer's physician. *(disclosure)*

see attached

Section 10 - ~~Requires the employer to provide certain health insurance benefits to an employee. Provides a penalty for failure to make the required payment.~~

Section 11 - Establishes a civil penalty that the board may impose if the employer fails to obtain the required insurance.

Section 12 - Requires that attorney fees awarded a prevailing employer disputing compensation with another employer be reasonable.

see attached

Section 13 - ~~Changes the weekly rate of compensation paid to an employee for disability or death. Provides for levels of compensation that depend on documentary proof of wages furnished by the employee. Prohibits the employer paying compensation at the employees spendable weekly wage without a board order, except as provided under regulations established by the board.~~

Section 14 - Requires an impairment rating be determined by a licensed physician, or in certain cases by a licensed physical or occupational therapist.

Section 15 - Clarifies the right to compensation that survives the death of the employee.

Section 16 - Limits the civil liability of an insurer, insurance service agent, or trade association for performing or failing to perform a safety inspection or safety advisory service.

Section 17 - Provides that a person acting as a volunteer emergency medical technician is considered an employee of the state for purposes of workers' compensation. Specifies the calculation of gross weekly earnings.

Section 18 - Amends the definition of "gross weekly earnings" to include temporary disability compensation.

Section 19 - Amends the definition of "medical stability" to include lack of deterioration, as well as lack of improvement from the effects of an injury.

the permanent impairment rating

Section 10 Employers whom provide health insurance to employees and covered dependents will reimburse injured employees for replacement coverage for an amount equal to the employer's contribution, whichever amount is less

However the employee must provide continued proof of coverage

The employer will start payment when current coverage ceases and cease payments when employee is no longer receiving compensation for the injury or 18 months whichever is shorter.

Provides a penalty for failure to make the required payment.

Section 13

Corrects conflicting language regarding procedure and clarifies the method of determining employee's minimum weekly compensation rate. The purpose is to codify the board's current practice.

Senator Drue Pearce

March 28, 1991

Page 3

Section 20 - Definition. of ^{Volunteer-} Emergency Medical Technician

Section 21 - Requires the division of insurance to prepare a report on implementation of a contracting classification premium adjustment program.

Section 22 - Transition section for reporting on reemployment benefits.

Section 23 - Effective date.

MFF:gc:pl
91-175.glc

TO: Mike Ford, Legislative Counsel
Division of Legal Services

FROM: Rod R. Mourant, Legislative Aide
Senate Labor & Commerce Committee

DATE: April 3, 1991

RE: SB 219

Please draft the following amendments for SB 219 7-LS1004\A
version:

1) Sec. 1. Add -

No change is intended regarding liability for conduct not concerning safety inspections or safety advisory services.

2) Sec. 1(b) Delete section and replace with -

(b) It is the purpose of sec. 18 of this Act to amend AS 23.30.265(15) to reaffirm the original intent of the 1982 amendment to include prior temporary total disability payments within the definition of gross wages.

3) Sec. 10(b) Delete section and replace with -

(b) Compensation required under this section commences when the employee's health insurance provided by the employer's contribution ceases and shall continue for 18 months, or until the employee is no longer receiving compensation described in (a) of this section, whichever period is shorter.

FAX TRANSMITTAL

DATE: 4/5/91

TO: Rod Mourant

COMPANY: Senator Pearce's Ofc.

LOCATION:

FAX #: ~~463-4993~~ 463-5352

FROM: MARY PIERCE

4060 Old Seward Highway, Suite 203
Anchorage, Alaska 99503
Telephone: (907) 563-3414
FAX#: (907) 562-7804

Page 1 of 6

RE: Rod

Since you asked yesterday for further amendments on SB219 for a CS, Kevin and I have spent the morning comparing notes, mainly our draft and SB219. There are still a few discrepancies which we will mention at the hearing but are very hopeful can get amended in the CS.

IF YOU DO NOT RECEIVE A COMPLETE AND LEGIBLE COPY OF THIS FAX PLEASE CALL THE MICA OFFICE NUMBER ABOVE

```

*****
*
* DELIVER TO: LIOCBLS
*
* ORIGINAL
* SENT: 04/05/91 TIME: 15:49
* FROM: LIOCMIL
* SUBJECT: 91-04-004, PL#2; (S)L&C; 4/5
* PRINT DATE: 04/05/91 TIME: 15:49
*
*****

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SUBJECT LINE TO READ: TC NO.; PL FS; SHORT SUBJECT, DATE

```

T/C NO: 91-04-004
DATE: 4/5
SPONSOR: (S) LABOR AND COMMERCE
SUBJECT: SB 219 WORKERS' COMP
MODERATOR: JUDY
SITE: ANCHORAGE

```

PARTICIPANT LIST

TO TESTIFY

NAMES/REPRESENTING	ADDRESS	PHONE	BILL NO.
1. KEVIN DOUGHERTY	2501 COMMERCIAL		SB 219
2. WARREN DVORAK	4600 DEBARR		SB 219
3. SHELBY NUENKE-DAVISON	1407 W 31		SB 219

4. MATT GROSKE/AD HOC WK CMP COM			SB 219
5. MARY PIERCE/AD HOC			SB 219
6.			

TO OBSERVE:

NAME/ REPRESENTING	ADDRESS	PHONE	BILL NO.
1. VIRGINIA BREEZE	101 E 9 #120	99501 274-1113	SB 219
2. RICH WHITBECK	1048 WHITNEY RD	99501 276-7000	SB219
3.			

4.

5.

```

BACK UP NUMBER: 561-1197
EMAIL ADDRESS: LIOCMIL

```

```

*****
*
* DELIVER TO: LIOCBL5
*
* ORIGINAL
* SENT: 04/05/91 TIME: 15:27
* FROM: LTCKTN
* SUBJECT: 91-04-004; FL 4; WORKERS COMP, 4-5
* PRINT DATE: 04/05/91 TIME: 15:27
*
*****

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```

T/C NO: 91-04-004
DATE: APRIL 5, 1991
SPONSOR: (S) LABOR & COMMERCE COMMITTEE
SUBJECT: SB 219: WORKERS' COMPENSATION CHANGES
MODERATOR: RAE RHODES
SITE: KETCHIKAN

```

PARTICIPANT LIST

```

*****
TO TESTIFY

```

NAME/REPRESENTING	ADDRESS	PHONE	BILL NO.
1. DONNA MAE LEWIS,	ALASKA TIMBER INSURANCE EXCHANGE		SB 219
2.			
3.			
4.			
5.			

```

*****
OBSERVED

```

NAME/REPRESENTING	ADDRESS	PHONE	BILL NO.
1.			
2.			
3.			
4.			
5.			

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**

```

*****
*
* DELIVER TO: LIOCBL5
*
* ORIGINAL
* SENT: 04/05/91 TIME: 15:27
* FROM: LYCKTN
* SUBJECT: 91-04-004;PL1;WORKERS COMP,4-5
* PRINT DATE: 04/05/91 TIME: 15:27
*
*****

```

```

T/C NO: 91-04-004
DATE: APRIL 5, 1991
SPONSOR: (S) LABOR & COMMERCE COMMITTEE
SUBJECT: SB 219: WORKERS' COMPENSATION CHANGES
MODERATOR: RAE RHODES
SITE: KETCHIKAN

```

PARTICIPANT LIST

```

*****
TO TESTIFY

```

NAME/REPRESENTING	ADDRESS	PHONE	BILL NO.
1. DONNA MAE LEWIS,	ALASKA TIMBER INSURANCE EXCHANGE		SB 219
2.			
3.			
4.			
5.			

```

*****
OBSERVED

```

NAME/REPRESENTING	ADDRESS	PHONE	BILL NO.
1.			
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5.			

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*****

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TESTIFIED:
UNABLE:
OBSERVED:

```

TOTAL

START TIME:

END TIME:

COMMITTEE TAPE LOG

COMMITTEE: Labor & Commerce DATE: 4/5/91 TIME: 3:30

SUBJECT: SB 212, SB 219

MEMBERS: Pearce, Collins, Halford, Elaison, Kerttula ^{Binn}
 VC RH DE Van ~~Case~~ Case -

SPEAKER	TAPE #	SIGNIFICANT INFORMATION
	344	Teleconference
SB 212		
David Walsh		reveals - Title 21 - hold harmless
Div. of Insurance -		agreement - allows safety valve - reserves - MICA - matches the number of claims filed - NORCAL took MICA'S debts -
	096	MICA couldn't have borrowed - \$4.7 million to state - policy holders will share - Need MICA - maybe - in/out state umbrella - 1/1/92 MICA will no longer exist - necessary bill pass -
Collins		looking at a MICA vehicle - objected to sale of MICA - concern benefit to individuals - copies of hearing - motion to move -
RH		money - premiums -
DW	190	1 year's premium paid to holders - state paid?
RH		
DW		yes - equity position by state - excellent return
DE		dealt during a special session - gave background - malpractice insurance

SPEAKER	TAPE #	SIGNIFICANT INFORMATION
DW-		NORCAL (?)
DE		mandatory insurance?
Marlan H		supports SB212, participated, enthusied with NORCAL - please move the bill on - stronger insurance with NORCAL
RH		passed out SB212 -
VC		Collins objected -
SB219		
Collins		reviewed bill and packet material - 3 amendments - submitted by the ad hoc committee - errors in drafting. gave page # of amendments & moved amendments into
Walford		CS - W/O so moved -
Anchorage		
Kevin ?		Labo Mgm. Labor Committee -
Mary Pierce		gave goal, Ak. labor reps, and?
2 others	329	from SB508 of last year - appreciate consideration - supreme ct. decision -
Mary Pierce		provided for remedy - employers are covered - not different from SB508.
RH	354	amendment # - what need -

Difficult to hear

SPEAKER	TAPE #	SIGNIFICANT INFORMATION
Kevin		exclusive protection - only objective of the amend - public policy -
RH		find course
Collins	388	Brook Brook (?) situation -
Kevin		exclusive - Van Buren v East Helicopters, Inc.
Kevin		second primary feature - loss benefits - cap on benefits - cost factor - make hold - status quo -
Pierce	421	reimbursement law, lost benefits - proof of insurance - important section -
RH		not an incentive for employers not to have health medical insurance -
Collins	451	only provided to an employee who is already insured - concern with whom it benefits - impact on premium
Pierce		1 cent increase -
RH		cost effect of each section -
Kevin	(?)	Brook Brook case - 1% health insurance increase -
Pierce		insurance premiums can go up 10%
Kevin		sect 4 - codify status quo -
Collins		discarded physician - neurological injuries - difficult to diagnose -

SPEAKER	TAPE #	SIGNIFICANT INFORMATION
Collins	518	suggests delete Pinc 9-11 on
		page 3 - no impairment ratings
		by other than a neurologist -
Anch aff		- (definition of neurological
		injuries) -
Pierce		Sect 6 - complex - provide 60%
		of victims weekly wage - need
	556	an impairment rating - two year
		time limit -
		questions?
Halford		- reviewed Sect. 6 - what changes
		from a person injured -
Pierce		payment for a time period -
		medical rating -
Side	B 583	
Pierce		allow physician to use other
		people to make an impairment
		rating - 2 year time limit -
		work on appeal -
Halford		question - compensation -
Pierce		problem with the bill -
Halford		cost is negligible -
Collins		number of injuries, inappropriate
		to rate for some time after
		injury or operation - ^{not} capricious
	548	
Pierce		

SPEAKER	TAPE #	SIGNIFICANT INFORMATION
Seven	530	Sect 11 - uninsured employer - all board to assess civil penalties - deterrent in the system -
Pierce		reference to (P.ason) - SB.208 - paraphrasing same language -
Collins		Dick Cattanaugh - have resigned has management -
Pierce		explained new members -
Linda Rexwinkel		Workers Comp. Division - lauded the ad hoc group - § continuation of health benefits - administrative impact - work load - fiscal notes - monitoring disclosures -
DE	482	what happened to 508 - fiscal notes - checked with Rod on last years -
L R.		updating data collection - over load - change to do monitoring -
DE		Could bring zero fiscal notes - Commissioner spoke from chair -
Ketchikan		-
Donna Mae supports bill -		Lewis, (AK Timber) Insurance - Van ^{Beune} Beune added endorsement to policy - timber industry participating -

SPEAKER	TAPE #	SIGNIFICANT INFORMATION
		W.C.C.A.
Warren	Derorak	- commends ad hoc - supported
		draft bill -
		Sect. 10 - page 7 - line 14 -
		Sect 12 line 12 - put reasonable
		back before costs -
Juneau -		
Jim Pfeifer		- Ab. Mat - major writer of workman's
supports -		comp - balanced project -
		Van Beine ^{Beine} - Ernie Hellers -
		service has declined - negatives
		can be avoided -
	355	Halford - amend #1 - delete
		monitoring of medical managers -
		more comprehensive than intent -
Dave Hatcher		- Ab. Coop - insurance since 1980 -
supports		extensive safety - curtailed - van
	Sect. 16	Beine ^{Beine} liability - inspection - cut
		back on safety -
		Concerned over amend #1
Mary Nordale		- Roberts, Monagle, etc, submitted
insert prepared		statement - insurance paper - asked to have
testimony		in record - responded to
		R.H.'s
Don Koch		- Div of Insurance - pricing
		impact - missing element.
	255	Sect 21 - fiscal impact -
		3 trips to Anch. publishing the document -

SPEAKER	TAPE #	SIGNIFICANT INFORMATION
		Sect 11 - Comp board not able to arrive at a rate -
DE		in last years bill -
Hock		- didn't recall,
DE		please check - negotiate over methodology -
Pfeifer	204	avoid fiscal notes - obligations - no fiscal notes attached -
Pierce	188	incredulous over a fiscal notes - Pfeifer is correct -
		delete sect. 21 - intent - no fiscal notes -
Rexwinkel		clarified - 3/2 - incur extra costs - implement data processing -
Halford		rescind the 3 amend - no obj.
	121	described amendments - no sense -
		3rd one has some merit - curious about sections not analyzed -
Collins		will propose changes -
DE	67	provisions - extra baggage -
Rexwinkel		these sections are needed - help to clarify - housekeeping - review the bill -
Halford		need sectional analysis - Rexwinkel will come back -

STATEMENT
of
Mary A. Nordale
in behalf of
American Insurance Association

My name is Mary A. Nordale. I am an attorney with the firm of Robertson, Monagle & Eastaugh in Juneau, and I represent the American Insurance Association in support of SB 219.

While the AIA supports the entire bill because it represents the negotiated position of the WCCA and Labor, AIA has particular interest in Section 16 of the bill, the so-called Van Biene provision. Section 16 would constitute a response to the question specifically posed to the Legislature by the Alaska Supreme Court in Van Biene v. Era Helicopters, Inc., 779 P. 2d 315 (Alaska 1989). In Van Biene the Court determined that "there is nothing in the statutory language of the Alaska scheme which prevents an employee from bringing suit against a compensation carrier for the negligent performance of a safety inspection" and that a different policy, and different result, would better be the determination of the Legislature.

In a similar case, the Idaho Supreme Court decided that a labor union could be held liable to injured workers for negligently performed safety inspections, Rawson v. United Steelworkers of America, 726 P. 2d 742 (Idaho 1986).

Section 16 of the bill would prevent liability from attaching to carriers, insurance service agents of self-insured employers and trade associations (a term that includes labor unions) for negligent safety inspections or negligent safety advisory services unless the negligence constituted intentional misconduct.

The policy issue is clear - either we rely solely upon the inspection and safety advisory services of OSHA and MS or we create a climate in which insurers and others, including labor unions, can perform voluntary safety inspections and services within the range of acceptable risk. If the reliance in the future is to be solely on governmental agencies, then the policy set forth in AS 21.89.015 should be repealed. AS 21.89.015 provides that "An insurer who provides workers' compensation insurance in this state shall establish and maintain a workplace safety rate reduction program, subject to the approval of the division." In other words, employers who adhere to strong safety principles and guidelines should benefit by insurance rate reductions. Rate reduction does not mean benefit reduction, but it does require those employers whose interest in safety is less than the norm to bear a larger share of the financial burden of supplying benefits.

II. General Public Policy Considerations

(1) Insurers voluntarily provide safety engineering and loss control services for their policyholders in keeping with their general business practices. These include evaluating an employer's workplace risk to ascertain a fair premium and to give advice on how to prevent injuries which could give rise to claims under the insurance policy. These objectives necessarily force an employer and insurer to confront workplace safety problems, with the obvious socially desirable benefits of reducing hazards. The exposure of insurers to unlimited potential tort liability as a result of the Van Biene decision guarantees that insurers will take steps to reduce or eliminate this new, unexpected risk by reducing their loss control and safety services. The consequence will be less reliance on safety inspections which insurers now preform voluntarily.

The imposition of unlimited tort liability upon insurers through the Van Biene decision has significantly chilled insurers' willingness to engage in workplace safety activities.

(2) The unlimited liability exposure of insurers presently existing as a result of Van Biene will cause insurance rates to rise. Such increases could be prohibitive and will be especially hard on small employers, because smaller employers, generally, are less able to absorb higher costs than are larger employers. Small employers are often those who could benefit from assistance with their safety programs. A rise in manual rates (the "basic" rate) means that any reduction in an employer's "final" rate, as affected by experience rating and other discounts, will be from a higher base -- so that final rates will be higher. The increase in basic rates -- to account for an insurer's greater uncertainty from possible subsequent liability -- will penalize safer employers and subsidize less safe employers; all end up paying more.

Workers' compensation insurance responds to economic incentives. When the cost of this voluntary service increases, insurers will reduce the underwriting of this type of insurance and reduce the safety services they provide. Insurers may also offer safety inspections and/or programs only in conjunction with an indemnity and hold harmless agreement from employers. The present existing risk is unascertainable and cannot be objectively evaluation. Therefore, benefits which may derive from safety inspections and programs are surpassed by the potential costs of unlimited tort exposure.

(3) The potential tort liability is a result of Van Biene

Statement of Mary A. Nordale
April 5, 1991
Page 3

will interfere with delivery of workers' compensation benefits. The specter of employee and carrier locked in legal combat would force each into a defensive posture which could only defeat the speedy and efficient resolution of the employee's claims, especially in the overwhelming majority of routine cases. The potential litigants could readily become:

"... uncooperative adversaries for fear of making damaging admissions to be used against them at trial. Instead of fully disclosing the facts and circumstances surrounding a workplace injury, each party would assume a defensive posture early in the process in anticipation of future litigation." Kifer, v. Liberty Mutual Insurance Co., 777 F.2d 1325, 1336 (8th Cir. 1985).

Another court stated:

"To allow this action to prevail would relegate [the informal workers' compensation claims process] to one of deafening silence. An atmosphere of caution would pervade the [process], with each party reluctant and wary lest any statement made might be utilized in future [litigation], in which potential recovery and risks would be much greater. For example, the employee, previously not concerned with the question of his negligence since that would not preclude recovery under the Workmens' Compensation Act, now would be circumspect in explaining the circumstances surrounding the accidental injury. So, too, the insurer, while previously willing to accord the employee the benefit of doubt ... might now desist from that practice lest this concession be treated as an admission in a contemplated tort action against it by the employee." Barrett v. Travelers Insurance Co., 246 A.2d 102, 105-108 (Super.Ct.Conn. 1968).

As a result of Van Biene, the informal workers' compensation proceeding will become a birthplace of further litigation against the employer's carrier. The claimant may use statements, pleadings, and other evidentiary materials submitted with respect to the workers' compensation claim against the insurer in a later civil action for negligence.

(4) Insurers should be encouraged to take an active role in workplace safety. The U.S. Congress has not expanded OSHA's inspection resources, not only for budgetary reasons, but also in recognition that the OSHA Act expressly imposes responsibility for workplace safety and health, not on the government, but on employers for ensuring workplace safety and recognition that, as employers, they are optimally situated to ensure their own workers' safety. This is also the case in those states which, under authority granted by OSHA, operate their own health and safety programs.

Therefore, any steps which militate against voluntary workplace safety efforts would not produce a corresponding increase in federal OSHA directed safety and health activities. There are approximately 11,500 insurer safety personnel nationwide. They should not be discouraged from conducting active programs in the workplace.

(5) An insurer and employer are considered one and the same for the general purposes of the workers' compensation law, such as notice of injury, jurisdiction, and the binding effect on an insurer of an award against an employer. This policy recognizes an employer's statutory obligations and insurer's indivisible responsibility in carrying out an employer's statutory obligations, as well as an assurance of efficient delivery of benefits. Preserving the insurer's immunity for injury allegedly related to workplace safety is, therefore, consistent with the general policy of considering employer and insurer responsibility as indivisible.

III. Immunity for Labor Organizations to Third Party Tort Actions

Senate Bill 219 provides immunity to a labor organization to the same extent as to an insurer. This would appear to be in the union's interest for several reasons:

(1) Notwithstanding a recent U.S. Supreme Court pronouncement holding an employee's state-law tort claim preempted by federal labor law, a union can still be held liable in tort.

The Court in IBEW, AFL-CIO v. Hechler, 481 U.S. 851 (1988) held the state-law tort claim was preempted by Section 301 of the Labor-Management Relations Act (LMRA) because the tort action rested on an interpretation of a collective bargaining agreement. That is, the union member's claim that the union breached its duty of care to provide her with a safe workplace was not sufficiently independent of the collective bargaining agreement to withstand

preemption. The trial court would have to ascertain whether the agreement in fact resulted in an implied duty of care on the union.

However, where a court would not have to look to a collective bargaining agreement, a state-law tort action could proceed because there would be no conflict with federal labor policy. Such a decision was reached in Rawson v. U.S. Steelworkers, 770 P.2d 794 (Idaho 1988). In light of the Supreme Court's holding in Hechler, the Idaho Supreme Court held a union could be liable in tort for negligence related to safety inspections where the union did undertake safety inspections. It remains an open question whether a labor organization can be liable for negligently not reporting apparent safety problems.

(2) By ensuring it is immune from state-law tort actions, the union need only concern itself about contractual liability imposed by freely-negotiated (and assumed) responsibilities under collective-bargaining agreements and, subject therefore, only to contractual actions for damages under Section 301 of the LMRA.

(3) This assurance should encourage unions to cooperate more fully with employers and insurers in various workplace safety programs, all to the ultimate benefit of the employees.

IV. Conclusion

Section 16 of the Senate Bill 219 represents a positive response by the Legislature to the decision by the Alaska Supreme Court in Van Biene and the Court's recognition that this issue is one of policy to be properly addressed by the Legislature. The cooperative and productive efforts made to enhance workplace safety by employers, insurers, and employee representatives, should be maintained through the passage of Senate Bill 508.

April 8, 1991

Alyeska - Paul Richards

AS 23.30.047

Concerned about additional cost to Alyeska since they keep employees on payroll already.

APR 1 8 1991

April 11, 1991

Senator Drue Pearce, Chairman
Senate Labor and Commerce Committee
Alaska State Legislature
P.O. Box V (MS 3100)
Juneau, Alaska 99811

Dear Senator Pearce:

As we sat through the hearing on Senate Bill 219 on Friday April 5, a number of concerns came to our attention which we would like to address in this letter. First it is obvious that the Ad Hoc Committee has been remiss in familiarizing the Labor and Commerce Committee with the background of the Ad Hoc Committee and its method of operation. Second, when we reviewed the Sectional Analysis of the Bill it was apparent that the author of the analysis did not fully understand that intent of the proposed Legislation. Finally, the Ad Hoc Committee believes that when the legislation was drafted, a number of sections were drafted in a manner which did not reflect the intent of the Committee. Hopefully this letter and the associated attachments will address these issues so that the Labor and Commerce Committee has a better understanding of the intent of the proposed legislation.

The Management/Labor Ad Hoc Committee was created in 1981 because neither representatives of the employee groups nor employer groups were satisfied with the traditional legislative approach to resolution of problems with the workers' compensation system. Representatives of labor and management agreed that a far better approach would be for a group representing the needs of injured workers and a group representing the interests of employers to work together to address deficiencies in the system. For ten years, five representatives of labor and five representatives of management have worked to refine the system so that the needs of the injured workers are addressed in a manner that is affordable to Alaskan employers. The process that has been developed is to present balanced bills which contain provisions beneficial to injured workers, provisions that are beneficial to employers, and provisions that deal with issues relevant to the administration. Since a proposed bill represents a compromise between the parties, attempts to modify the proposal as it progresses through the legislative process have been resisted unless it is believed that the change would not upset the delicate balance of the bill. The only concern of the Ad Hoc Committee is to improve the workers' compensation system so that it better serves the needs of the injured worker at a cost that is affordable to the Alaskan employer. It is the belief of the Ad Hoc Committee that by dealing with the problem in this manner, we are able to remove the resolution of workers' compensation issues from the

legislative process. The benefit to the Legislators is that this controversial issue is dealt with outside the legislative process.

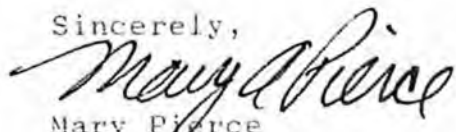
Enclosed as an attachment to this letter is the Ad Hoc Committee's Sectional Analysis of SB 219. You will see that it differs somewhat from the sectional analysis prepared by the Division of Legal Services. Our section analysis reflects the intent of the legislation as originally proposed. If, after review, it is determined that SB 219 as drafted does not reflect that intent, we would like to request that the draft be modified to reflect the intent set forth in our section analysis.

Also enclosed are recommended changes to SB 219. These reflect changes that we have identified as necessary to capture the intent of the section. Where necessary the reasons for the changes have been provided.

Lastly, we would like to address the issue of the fiscal notes that were attached to the legislation. We agree that the Division of Workers' Compensation may realize an minor impact from having to occasionally file the notice requirements from medical managers, but we believe that any additional cost will be more than offset from the cost savings realized from the reduction in hearings resulting from Sections 6 and 13 and the additional revenue produced under Sec. 11. Similarly, we have requested that the Division of Insurance prepare a statistical study but we had not intended that they incur travel costs to present their findings. A mailed report is satisfactory, and this possibly will remove their fiscal note.

Hopefully, this information will help the Committee better understand the intent of the Legislation and permit the bill to move forward. If we can provide any additional assistance on this matter, please let us know.

Sincerely,


Mary Pierce
Co-Chair


Kevin Dougherty
Co-Chair

SECTION ANALYSIS
SB 218

The following is a section by section analysis of SB 219.

Section 1. Purpose of sections 16, 18, and 19.

Section 2. Changes the period covered by the reemployment benefits report submitted by the administrator. Adds to the administrator's duty to monitor the disclosure of the medical manager created in Section 9.

Section 3. Provides the administrator with the authority to review the file and determine whether an employee is eligible for an eligibility evaluation. The purpose of this amendment is to codify the rehabilitation administrator's current practice.

Section 4. For purposes of vocational rehabilitation benefits eligibility this section adds authority for para-medical personnel to determine physical capacities of employees in the case of muscular, skeletal or neurological injuries.

Section 5. Requires the rehabilitation specialist to certify that the reemployment plan meets the requirements imposed under AS 23.30.041(h). Requires amendment of a plan that does not meet statutory requirements, and prohibits an additional charge by the rehabilitation specialist for amending the plan unless approved by the rehabilitation administrator.

Section 6. This section provides for payment of 60 percent of the employee's spendable weekly wage for the time between reaching medical stability but before receiving an impairment rating. Payments during this time, except for the first 30 days, will be offset against the permanent impairment rating.

In addition, if a controversion or appeal of the employees claim delays completion of rehabilitation, the employer shall pay 60 percent of the spendable weekly wage during this period and the two year limit is tolled. This payment will not be offset against the permanent impairment rating.

Section 7. This section provides that the cost of the reemployment specialist shall be paid by the employer, may not be included in the cost of the reemployment plan, and allows the board to compare fees and determine the reasonableness of changes by the reemployment specialist.

Section 8. This section adds the definition of a medical manager.

Section 9. This section requires the medical manager to send a notice to the employee, employer, and the employee's physician defining the medical managers role.

2 ✓ Section 10. Employers who provide health insurance to employees and covered dependents will reimburse injured employees for replacement coverage or an amount equal to the employer's contribution, whichever amount is less. However, the employee must provide continued proof of coverage.

The employer will start payment when current coverage ceases and cease payments when employee is no longer receiving compensation for the injury or 18 months whichever is shorter. It provides a penalty for failure to make the required payment.

3 ✓ Section 11. This section establishes a civil penalty that the board may impose if the employer fails to obtain the required insurance.

✗ Section 12. This section requires that all attorney fees and costs awarded a prevailing employer disputing compensation with another employer be reasonable.

Section 13. This section corrects conflicting language regarding procedure and clarifies the method of determining employee's minimum weekly compensation rate. The purpose is to codify the board's current practice.

Section 14. This section requires an impairment rating be determined by a licensed physician or in some cases by paramedical personnel.

Section 15. This section clarifies the right to compensation that survives the death of the employee.

4 ✓ Section 16. This section limits the civil liability of an insurer, insurance service agent, or trade association for performing or failing to perform a safety inspection or safety advisory service.

Section 17. This section provides that a person acting as a volunteer emergency medical technician is considered an employee of the state for purposes of workers' compensation and specifies the calculation of gross weekly earnings.

Section 18. This section amends the definition of "gross weekly earnings" to include temporary disability compensation.

Section 19. This section amends the definition of "medical stability" to include lack of deterioration, as well as lack of improvement from the effects of an injury.

Section 20. This section provides definition of volunteer emergency medical technician.

Section 21. This section requires the division of insurance to prepare a report on implementation of a contracting classification premium adjustment program.

Section 22. This section provides a transition section for reporting on reemployment benefits.

Section 23. This section establishes an effective date.

RECOMMENDED MODIFICATIONS TO SB 219

1. Section 1(a) - add new sentence at the end to read.

"No change is intended regarding liability for conduct not concerning safety inspections or safety advisory services."

2. Section 1(b) should read:

It is the purpose of Section 18 of this act to amend AS23.30.265(15) to reaffirm the original intent of the 1982 amendments to include prior temporary total disability payments within the definition of gross wages.

3. Section 1(c) should read:

It is the purpose of Section 19 of this Act to amend AS 23.30.265(21) to assure that the presumption of compensability in AS 23.30.120(a)(1) continue to be applied ^{to} the question of whether an injury is related to employment. This section also clarifies that medical stability results from a condition from which objectively measurable improvement or deterioration is not expected from further medical treatment, and that medical stability is presumed in the absence of improvement or deterioration after 45 days.

4. Section 2(7) should read:

(7) monitor the reporting activities of medical managers assigned by the carrier to an injured employee.

5. Section 4 should be modified to read:

(e) An employee is eligible for benefits under this section upon the employee's written request and by having a licensed physician or other licensed para-medical personnel, predict that the employee will have permanent physical capacities, based on objective and verifiable data, that . . .

6. Section 6 (k)(2) should be modified as follows:

(2) if the employee reaches medical stability and has requested a rehabilitation plan, or has been . . .

7. Section 6 (k)(4) should be modified as follows:

(4) if the employee reaches medical stability before an impairment rating is given as provided in AS 23.30.190, the employee shall . . .

8. Section 6 (k)(6)

(6) if the employer controverts the employee's claim or appeals a ruling of the administrator or the board and the controversion or appeal delays completion of an evaluation,

development, commencement or completion of a plan and the employee is successful in the claim or appeal, . . .

9. Section 7. The last sentence should read as follows:

Fees charged by and paid to a rehabilitation specialist for services must be reasonable as compared to fees for similar services in the community in which the services are performed, as determined by the board.

10. Section 10 (b). The last sentence should read as follows:

Payments required under this section commences when the employee's health insurance provided by the employer's contribution ceases and shall continue for 18 months, or until the employee is no longer receiving compensation described in (a) of this section, whichever period is shorter.

11. Section 10 (c) should be changed to read as follows:

Payment is not required under this section until the employee provides on-going proof of health insurance coverage. In this subsection, "health insurance" includes an individual policy of health insurance, an individual conversion policy, or a notice of self-payment for continuance of coverage under COBRA or a union health or welfare trust agreement.

12. Section 12 is modified as follows:

When payment of benefits are controverted

The final sentence in this section should read as follows:

When a final determination of liability is made, any reimbursement required, including interest at the statutory rate, and all reasonable costs and attorneys' fees incurred by the prevailing employer, shall be made within 14 days of the determination.

13. Section 14. The final sentence should be modified as follows:

An impairment rating shall be determined by a licensed physician. Measurements of mobility may be made by para-medical personnel.

Municipality of Anchorage



P.O. BOX 15555
ANCHORAGE, ALASKA 9 1519-6850
(907) 343-4425

TOM FINK,
MAYOR

DEPARTMENT OF EMPLOYEE RELATIONS

April 15, 1991

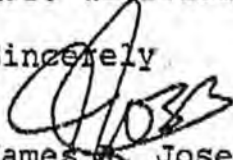
To Whom It May Concern:

The Municipality of Anchorage is opposed to SB 219 (L&C) "An Act relating to Workers Compensation, and providing an effective date".

Reasons:

1. Although the main thrust of the bill is commendable as we interpret it, i.e., the shift of Workers Compensation to managed care principles, i.e., prospective and retrospective utilization management, early intervention on potential problem cases and return-to-work programs, there is continuing concern about developing a new penalty structure and setting higher fines for workplace health and safety violations. Employers whose unsafe policies and actions either knowingly or carelessly place workers in jeopardy should be sanctioned.
2. This bill lumps all employers together and even the diligent employer working in good-faith who "unknowingly" violates this bill will be subject to imprisonment and penalties equal to three times the manual rate that would have been charged for an employers insurance premium during the period the employer failed to obtain insurance. This is excessive and over reactive.
3. Establish legislation that requires employers to examine the cause of accidents, the results, develop new techniques for investigations and help create a new workplace environment where accidents will be declining and huge savings as well as improved production will result, is a more desirable approach.

Sincerely,


James M. Jose
Director, Employee Relations



TELECOPY COVER SHEET

SENATOR DRUE PEARCE'S OFFICE

VOICE (907) 465-4993 FAX (907) 463-5352

To: DEPT. OF LABOR Fax: 465-2784

Attn: COMMISSIONER USERA Phone: _____

Transmitted by: _____ Date: 4/22/91

Re: WORKER'S COMPENSATION

Comments: HERE IS AD AOC'S LATEST

LETTER. THIS AND SB 217 WILL BE

TOPICS OF TODAY'S 2:30

TELE CONFERENCE

PLEASE CALL 465-3844 AT 2:30 PM.

TODAY. THANKS - Rod.

Number of Pages: 8 Including Cover Sheet.



April 23, 1991

Dear :

for 1991.

was before it
is presently

The Senate Labor & Commerce Committee ~~has been faced with taking action on~~ Senate Bill 219 which reflects the Ad Hoc Committee's legislative priorities. (The discomfort level of the committee began rising when it seemed that no one was either willing or able to explain why elements other than the VanBiene decision and offsetting medical benefits sections were included in the legislation.)

The important charge of the Ad Hoc Committee is to do preliminary work, identify areas of concern and suggest alternatives. The committee should be commended for its work in this area.

However, the draft legislation submitted by the committee was developed with little or no public input. There were no notices of meetings being held to discuss legislation. None the less, when it was forwarded to the legislature, the draft legislation carried the message that it had been carefully crafted and was a balanced bill. In order to maintain support for the legislation the legislature was told that it had to be adopted in its entirety and without substantive change.

Throwing another element of doubt on the legislation was the recent resignation of two of the Ad Hoc Committee members. Integrity remained unquestioned but the substance of the legislation came into doubt. Were the resignations somehow connected to the legislation?

Elements of last years's SB 508 seem appropriate and have received significant public discussion. As a result, the Labor & Commerce Committee is having drafted a committee substitute bill that addresses two items mentioned in those comments, the Van Biene decision remedy and the issue of offsetting medical benefits.

Bearing in mind that the legislature has a desire to improve the

workers' compensation process and that it is the legislature that sets public policy, I urge the Ad Hoc Committee to meet during the interim and include in the meetings representatives of the Department of Labor and the Legislature. Through the work of this consensus group legislation can be drafted which can be finalized through the public hearing and legislative processes.

The role the Ad Hoc Committee plays in this process is an important one. Its members work together to identify and suggest ways to address deficiencies. Balance in legislation is an admirable achievement but only if reached through public participation.

I look forward to working with you on this important legislative issue in the future.

Sincerely,

Drue Pearce

DP:rrm

cc: Honorable Nancy Bear-Use'a, Commissioner
Department of Labor

Members
Ad Hoc Committee on Workers Compensation

Bruce?

Members
Senate Labor & Commerce Committee

← This
is who
it's to
|||

Alaska State Legislature

Senator Druce Pearce, Chair
Senator Virginia Collins, Vice Chair
Senator Dick Eliason
Senator Rick Halford
Senator Jay Kerttula



SENATE LABOR AND COMMERCE COMMITTEE

WHILE IN JUNEAU
P.O. BOX V
JUNEAU, ALASKA 99811
(907) 465-3844

3111 C STREET, SUITE 150
ANCHORAGE, ALASKA 99504
(907) 561-2018

TO: Mike Ford, Legal Counsel
Legal Services Division

FROM: Rod Mourant, Legislative Aide *Rod*
Senate Labor & Commerce Committee

DATE: April 23, 1991

RE: SB 219

Mike, per Senator Pearce's request, would you please compare the recommended changes in the attached April 11th letter from the Ad Hoc Committee on Workers' Compensation with the applicable provisions in SB 219 version 7-LS1004\A.

In that comparison would you note which changes are style changes and which are substantive changes. In the case of substance changes, please explain the significance of the change.

Your timely attention to this matter would be appreciated.

Thanks.

Attachment

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

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(907) 465-3867 or 465-2450
FAX (907) 465-2029

Deliveries to: 240 Main Street
Court Plaza, Room 500
Mail Stop 3101

MEMORANDUM

April 24, 1991

SUBJECT: Workers' compensation - (SB 219)
TO: Senator Drue Pearce
FROM: Michael F. Ford *M.F.*
Legislative Counsel

You have asked for a comparison of changes recommended by the ad hoc committee on workers' compensation with the provisions of SB 219. The following is a section by section analysis of the recommended changes:

Section 1 -

- (a) The recommended change would further clarify the purpose of section 16. The change has no substantive effect.
- (b) The recommended change expands on the purpose of section 18. The recommended change has no substantive effect.
- (c) The first sentence of the recommended change would relate to a purpose not reflected by changes in section 19. The question of whether an injury is related to employment is a different issue than the issue raised by changing the definition of "medical stability" as made in section 19. The second sentence of the recommended change is presently contained in SB 219. This subsection has no substantive effect.

Section 2 - The recommended change is contained in SB 219. The SB 219 provision does contain additional modifying language not contained in the language recommended by the ad hoc committee.

Section 3 - No recommended changes.

Section 4 - The recommended changes would substitute "para-medical personnel" for "licensed physical or occupational therapist" in AS 23.30.041(e). The language would be a substantive change.

Section 5 - No recommended changes.

Section 6 - The recommended change to subsection (k)(2) is in part contained in SB 219. The part not included in SB 219 is duplicative of an existing provision of law contained in AS 23.30.041(e). The recommended change to subsection (k)(4) would delete the phrase "except for the first 30 days". This would be a substantive change. The recommended change to subsection (k)(6) is contained in SB 219 with the exception of a requirement that the employee be "successful in the claim or appeal." This language was omitted because it was unclear what would occur if the employee was not successful in the claim or appeal. This language would be a substantive change.

Section 7 - The recommended change is contained in SB 219, with only minor form and style changes from the language of the ad hoc committee.

Section 8 - No recommended changes.

Section 9 - No recommended changes.

Section 10 - The recommended change to subsection (b) is contained in SB 219. The recommended changes to subsection (c) are contained in SB 219, with the exception of form and style changes.

Section 11 - No recommended changes.

Section 12 - The recommended change to the first sentence of AS 23.30.155(d) is not contained in SB 219. This would be a substantive change. The recommended change to the last sentence of that section is contained in part in SB 219. The insertion of "reasonable" before "costs" instead of "attorneys" would be a minor substantive change.

Section 13 - No recommended changes.

Section 14 - The recommended changes are contained in part in SB 219. The part not presently in SB 219 is the second sentence of the recommended change. This would be a substantive change.

Sections 15 - 23 - No recommended changes.

MFF:lmb
91-138.lmb

Alaska State Legislature

Senator Drue Pearce, Chair
Senator Virginia Collins, Vice Chair
Senator Dick Eliason
Senator Rick Hallford
Senator Jay Kerttula



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SENATE LABOR AND COMMERCE COMMITTEE

April 25, 1991

Mary Pierce, Co-Chair
Ad Hoc Committee on Workers' Compensation
4000 Old Seward Highway, Suite 203
Anchorage, AK 99503

Dear Ms. ~~Pierce~~: *Mary*

The Senate Labor and Commerce Committee has Senate Bill 219 under consideration. It reflects the Management/Labor Workers' Compensation Ad Hoc Committee's proposals for legislation this session.

The Committee is familiar with the background of the Ad Hoc Committee. We agree that the group can play an important role by doing preliminary work to identify areas of concern and by suggesting alternatives to address deficiencies in the worker's compensation system. We appreciate the need for continued improvement of the system so that it better serves the needs of injured workers at an affordable cost.

However, we cannot agree with the stated belief of the Ad Hoc Committee that the resolution of worker's compensation issues should be removed from the legislative process. The draft legislation submitted to our Committee was developed with little or no public input. There were no public notices of the meetings, to our knowledge. The Ad Hoc group presented us with a bill they considered to be balanced and members have asserted that we should not change any provisions lest we lose the support of the group even though there has been no public input. Quite frankly, we do not plan to perform in that manner.

There is some real concern on the part of the Committee about this bill. First, while no person's integrity has been questioned, two Ad Hoc committee members who represented management have resigned from their positions with the Worker's Compensation Committee of Alaska but not from the Ad Hoc committee. We understand from the WCCA that the resignations were caused by concerns about the proposed legislation. This raises questions about the process and the makeup of the Ad Hoc group.

We are also concerned that there are elements of the bill that no group claims to have initiated. Further, during the public hearing on April 5th no testimony was offered to justify most of the elements contained in the bill or to adequately justify those requested late by the Ad Hoc Committee.

We also believe that the Department of Labor's Division Director and the Legislature should be involved in the process of the working group at some point before draft legislation is presented for introduction.

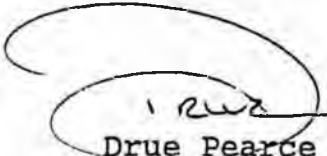
Bearing in mind that this legislature has a desire to improve the worker's compensation system just as you do, and that it is our responsibility to set public policy through a time honored process, we would urge the Ad Hoc Committee to continue to meet in a more open manner to suggest alternatives to the present laws. We want to work with you to reach a balanced compromise through public participation.

We have chosen to take elements of the bill which were included in last year's ill-fated SB508 in a CS that we will be passing from Committee. The two items, the Van Biene decision remedy and the issue of offsetting medical benefits, have had significant public review and seem appropriate. We would hope that you will continue to support these elements, as you have in the past.

We would also hope that you will be willing to work with us during the interim to refine further changes in the statutes that you have identified as needing attention.

Thank you.

Sincerely,



Drue Pearce

DP:rm

cc: Honorable Nancy Bear-Usera, Commissioner
Department of Labor

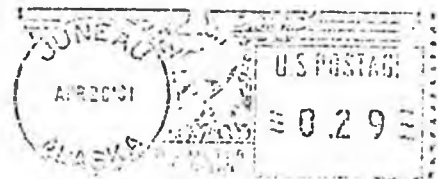
Bruce Kendall, Legislative Liaison
Office of the Governor

Pat Smutz, Representative
State AFL/CIO

Warren L. Dvorak, President
Workers's Compensation Committee of Alaska

Committee Members
Senate Labor & Commerce Committee

Drue Pearce
State Legislature
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ge, Alaska 99503
ring Session
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u, Alaska 99811



Kevin Dougherty
Ad Hoc Committee on Workers' Compensation
1818 W. Northern Lights Blvd.
Anchorage, AK 99517
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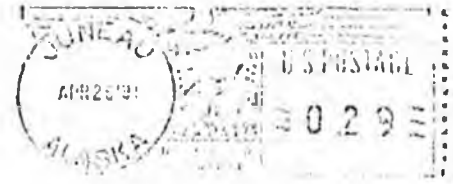


Drue Pearce

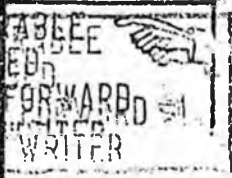
State Legislature

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Anchorage, Alaska 99503

Spring Session
P.O. Box V
Anchorage, Alaska 99811



Jeff Wertz *e/o* *MACHINIST UNION LOCAL 601*
Ad Hoc Committee on Workers' Compensation
1818 W. Northern Lights Blvd.
Anchorage, AK 99517



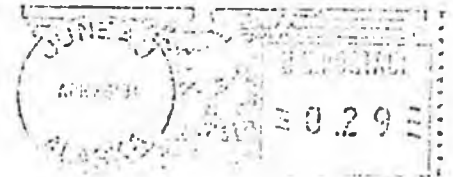
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Drue Pearce

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Spring Session
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Joe Thomas
Ad Hoc Committee on Workers' Compensation
1818 W. Northern Lights Blvd.
Anchorage, AK 99517



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Drue Pearce

State Legislature

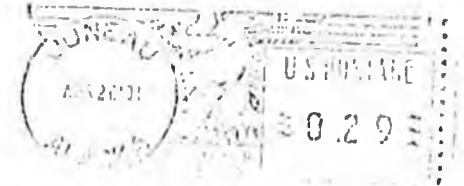
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u, Alaska 99811



Matt Grotskie
Ad Hoc Committee on Workers' Compensation
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Anchorage, AK 99517

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Steve Boyd
Ad Hoc Committee on Workers' Compensation
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SENATE LABOR AND COMMERCE COMMITTEE

April 25, 1991

Elaine Taylor
Ad Hoc Committee on Workers' Compensation
1301 E. 71st
Anchorage, AK 99518

Dear Ms. Taylor: *Elaine*

The Senate Labor and Commerce Committee has Senate Bill 219 under consideration. It reflects the Management/Labor Workers' Compensation Ad Hoc Committee's proposals for legislation this session.

The Committee is familiar with the background of the Ad Hoc Committee. We agree that the group can play an important role by doing preliminary work to identify areas of concern and by suggesting alternatives to address deficiencies in the worker's compensation system. We appreciate the need for continued improvement of the system so that it better serves the needs of injured workers at an affordable cost.

However, we cannot agree with the stated belief of the Ad Hoc Committee that the resolution of worker's compensation issues should be removed from the legislative process. The draft legislation submitted to our Committee was developed with little or no public input. There were no public notices of the meetings, to our knowledge. The Ad Hoc group presented us with a bill they considered to be balanced and members have asserted that we should not change any provisions lest we lose the support of the group even though there has been no public input. Quite frankly, we do not plan to perform in that manner.

There is some real concern on the part of the Committee about this bill. First, while no person's integrity has been questioned, two Ad Hoc committee members who represented management have resigned from their positions with the Worker's Compensation Committee of Alaska but not from the Ad Hoc committee. We understand from the WCCA that the resignations were caused by concerns about the proposed legislation. This raises questions about the process and the makeup of the Ad Hoc group.

Alaska State Legislature

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SENATE LABOR AND COMMERCE COMMITTEE

April 25, 1991.

Dick Cattanach
Ad Hoc Committee on Workers' Compensation
8101 Old Seward Highway
Anchorage, AK 99518

Dear Mr. Cattanach: *LICK*

The Senate Labor and Commerce Committee has Senate Bill 219 under consideration. It reflects the Management/Labor Workers' Compensation Ad Hoc Committee's proposals for legislation this session.

The Committee is familiar with the background of the Ad Hoc Committee. We agree that the group can play an important role by doing preliminary work to identify areas of concern and by suggesting alternatives to address deficiencies in the worker's compensation system. We appreciate the need for continued improvement of the system so that it better serves the needs of injured workers at an affordable cost.

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SENATE LABOR AND COMMERCE COMMITTEE

April 25, 1991

Richard Whitbeck
Ad Hoc Committee on Workers' Compensation
1048 E. Whitney Road
Anchorage, AK 99501

Dear Mr. Whitbeck: *Richard*

The Senate Labor and Commerce Committee has Senate Bill 219 under consideration. It reflects the Management/Labor Workers' Compensation Ad Hoc Committee's proposals for legislation this session.

The Committee is familiar with the background of the Ad Hoc Committee. We agree that the group can play an important role by doing preliminary work to identify areas of concern and by suggesting alternatives to address deficiencies in the worker's compensation system. We appreciate the need for continued improvement of the system so that it better serves the needs of injured workers at an affordable cost.

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SENATE LABOR AND COMMERCE COMMITTEE

April 25, 1991

Terry McCarty
Ad Hoc Committee on Workers' Compensation
3000 A
Anchorage, AK 99503

Dear Mr. McCarty: Terry

The Senate Labor and Commerce Committee has Senate Bill 219 under consideration. It reflects the Management/Labor Workers' Compensation Ad Hoc Committee's proposals for legislation this session.

The Committee is familiar with the background of the Ad Hoc Committee. We agree that the group can play an important role by doing preliminary work to identify areas of concern and by suggesting alternatives to address deficiencies in the worker's compensation system. We appreciate the need for continued improvement of the system so that it better serves the needs of injured workers at an affordable cost.

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