ALASKA LEGISLATURE COMMITTEE FILES 1999-2000 8672
9954 HOUSE LABOR & COMMERCE

Insurance Operations

Personal Services Information

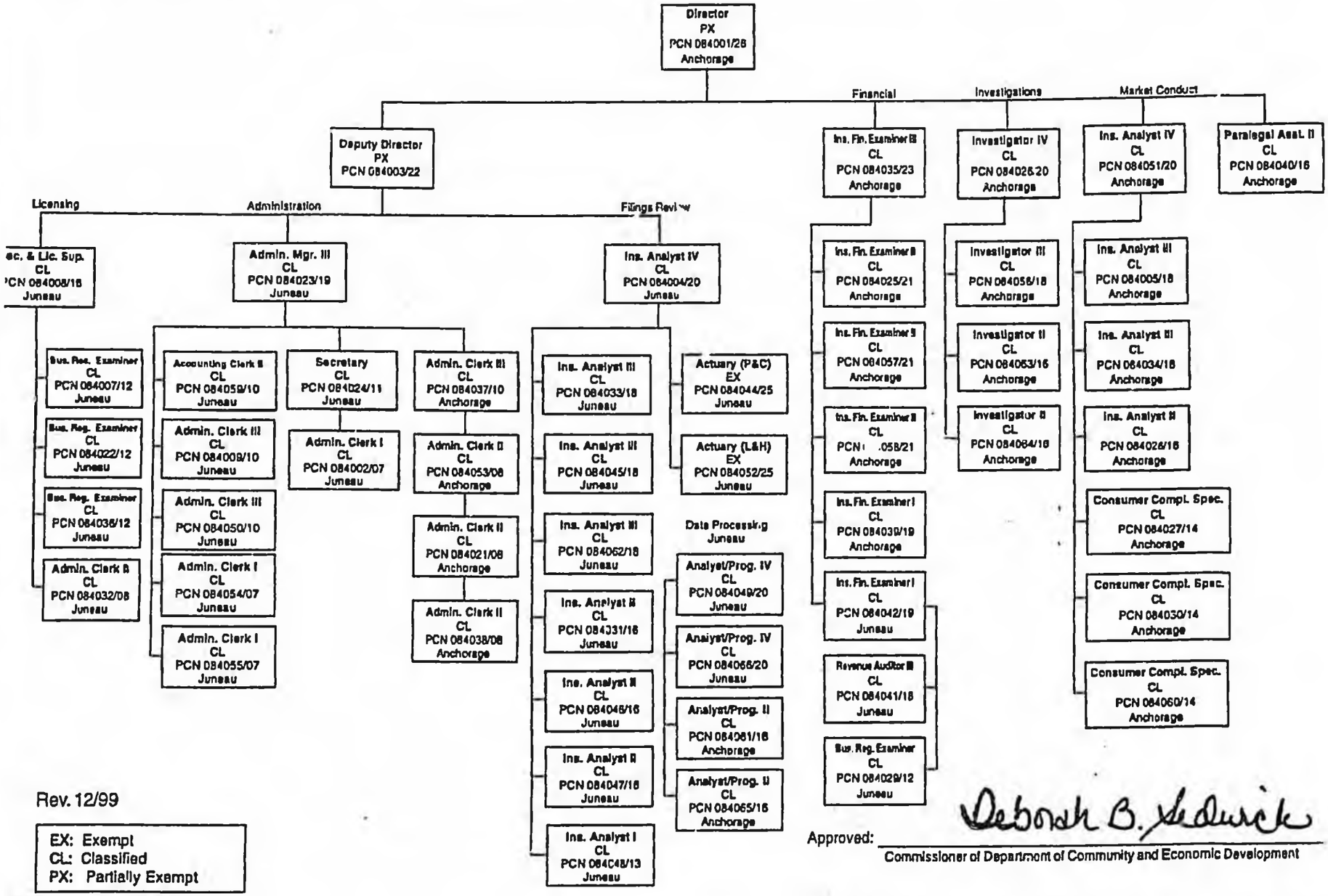
Authorized Positions			Personal Services Costs	
	FY2000 Authorized	FY2001 Governor		
Full-time	52	53	Annual Salaries	2,340,124
Part-time	0	0	Premium Pay	0
Nonpermanent	0	0	Annual Benefits	755,773
			Less 4.00% Vacancy Factor	(123,836)
			Lump Sum Premium Pay	0
Totals	**52**	**53**	**Total Personal Services**	**2,972,061**

Position Classification Summary

Job Class Title	Anchorage	Fairbanks	Juneau	Others	Total
Accounting Clerk II	0	0	1	0	1
Actuary	0	0	2	0	2
Administrative Clerk I	0	0	3	0	3
Administrative Clerk II	3	0	1	0	4
Administrative Clerk III	1	0	2	0	3
Administrative Manager III	0	0	1	0	1
Analyst/Programmer II	0	0	2	0	2
Analyst/Programmer IV	0	0	2	0	2
Business Reg Examiner	0	0	4	0	4
Consmr Complt Spec/Ins	3	0	0	0	3
Dep Dir Insurance	1	0	0	0	1
Division Director	0	0	1	0	1
Ins Analyst I, Rates	0	0	1	0	1
Ins Analyst II, Market	1	0	2	0	3
Ins Analyst II, Rates	0	0	1	0	1
Ins Analyst III, Markt	2	0	2	0	4
Ins Analyst III, Rates	0	0	1	0	1
Ins Financial Exam I	1	0	1	0	2
Ins Financial Exam II	3	0	0	0	3
Ins Financial Exam III	1	0	0	0	1
Insurance Analyst IV	1	0	1	0	2
Investigator II	1	0	1	0	2
Investigator III	1	0	0	0	1
Investigator IV	1	0	0	0	1
Paralegal Asst II	1	0	0	0	1
Records & Licensing Spvr	0	0	1	0	1
Revenue Auditor III	0	0	1	0	1
Secretary	0	0	1	0	1
Totals	**21**	**0**	**32**	**0**	**53**

DIVISION OF INSURANCE

FY 2001
State of Alaska
Department of Community and Economic Development



Rev. 12/99

EX: Exempt
CL: Classified
PX: Partially Exempt

Approved: Deborah B. Sedwick
Commissioner of Department of Community and Economic Development

Effective Date: _____

HB 419

1-LS1418\G.1
Ford
3/16/00

A M E N D M E N T

OFFERED IN THE HOUSE BY REPRESENTATIVE ROKEBERG

TO: CSHB 419(L&C), Draft Version "G"

Page 7, line 16, following "**employee.**":

Insert "**This subsection may not be construed to authorize an employer, carrier, rehabilitation specialist, or reemployment benefits administrator to request medical or other information that is not applicable to the employee's injury.**"

1-LS1418\G.2
Ford
3/20/00

AMENDMENT

OFFERED IN THE HOUSE BY REPRESENTATIVE ROKEBERG

TO: CSHB 419(L&C), Draft Version "G"

Page 2, line 2, following "**schedule;**":

Insert "**relating to the effect of religious nonmedical treatment on workers' compensation coverage;**"

Page 12, following line 31:

Insert a new bill section to read:

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

Sec. 23.30.280. Coverage for religious nonmedical health care services. Nothing in this chapter shall be construed to prevent an employee with an injury from relying in good faith on religious nonmedical services for healing through prayer alone or care through religious nonmedical nursing services provided by an individual, a nursing facility, or a visiting nurse service without incurring a loss or reduction of compensation or benefits due under this chapter. This section does not exempt an employee from submitting to an examination by a physician or surgeon as required under AS 23.30.095(e)."

Renumber the following bill sections accordingly.

Page 13, line 6:

Delete "19"

Insert "20"

Page 13, line 7:

Delete "20"

Insert "21"

Page 13, line 8:

Delete "21"

Insert "22"

Amendment _____ Offered by Representative Sanders

HB419
1-LS1418/G

Page 3, Line 30:

Delete:

employer or the

Not Passed

Amendment _____ Offered by Representative Sanders

HB419
1-LS1418/G

Page 3, Line 30:

Following "**employer**":

Delete "**or**" and insert "**and**"

Not Heard

1-LS1418\G
Ford
3/7/00

CS FOR HOUSE BILL NO. 419(L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Offered:
Referred:

Sponsor(s): HOUSE LABOR AND COMMERCE COMMITTEE BY REQUEST

A BILL

FOR AN ACT ENTITLED

"An Act relating to the weekly rate of compensation and minimum and maximum compensation rates for workers' compensation; specifying components of a workers' compensation reemployment plan; adjusting workers' compensation benefits for permanent partial impairment, for reemployment plans, for rehabilitation benefits, for widows, widowers, and orphans, and for funerals; relating to permanent total disability of an employee receiving rehabilitation benefits; relating to calculation of gross weekly earnings for workers' compensation benefits for seasonal and temporary workers and for workers with overtime or premium pay; setting time limits for requesting a hearing on claims for workers' compensation, for selecting a rehabilitation specialist, and for payment of medical bills; relating to termination and to waiver of rehabilitation benefits, obtaining medical releases, and resolving discovery disputes relating to workers' compensation; setting an interest rate for

late payments of workers' compensation; providing for updating the workers' compensation medical fee schedule; and providing for an effective date."

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

*** Section 1.** The uncodified law of the State of Alaska is amended by adding a new section to read:

INTENT. It is the intent of the legislature that

(1) AS 23.30 be interpreted so as to ensure the quick, efficient, fair, and predictable delivery of indemnity and medical benefits to injured workers at a reasonable cost to the employers who are subject to the provisions of AS 23.30;

(2) AS 23.30 not be construed by the courts in favor of any party;

(3) workers' compensation cases be decided on the merits, except when otherwise provided by statute;

(4) increases in benefits be tied to the state average weekly wage so as to more fairly compensate injured workers and that the benefit rate in effect at the time of injury remain the benefit rate for the life of the claim without regard to any changes that may occur in the state average weekly wage subsequent to the year of injury;

(5) AS 23.30.041 be amended to clarify existing language and to mandate compliance by the board, the reemployment administrator, and the parties with the deadlines in AS 23.30.041;

(6) vocational rehabilitation clearly be a voluntary process that allows claimants to waive their rights to receive reemployment benefits;

(7) claimants be entitled to permanent impairment benefits and reduced compensation while involved in the reemployment process so as to encourage injured workers to complete that process as quickly as possible and return to the workplace in an expeditious and efficient manner;

(8) claimants provide releases of information that allow employers and insurers and their agents to obtain promptly information needed to investigate and adjust claims;

(9) medical information relevant to a claim be discoverable and be promptly provided; and

(10) the discovery process be improved to encourage the quick and efficient

resolution of discovery disputes under AS 23.30.

* Sec. 2. AS 23.30.041(g) is amended to read:

(g) Within 15 [10] days after the employee receives the administrator's notification of eligibility for benefits, an employee who desires to use these benefits shall give written notice to the employer of the employee's selection of a rehabilitation specialist who shall provide a complete reemployment benefits plan. **Failure to give notice required by this subsection constitutes noncooperation under (n) of this section.** If the employer disagrees with the employee's choice of rehabilitation specialist to develop the plan and the disagreement cannot be resolved, then the administrator shall assign a rehabilitation specialist. The employer and employee each have one right of refusal of a rehabilitation specialist.

* Sec. 3. AS 23.30.041(h) is amended to read:

(h) Within 90 days after the rehabilitation specialist's selection under (g) of this section, the reemployment plan must be formulated and approved. **The reemployment plan must require continuous participation by the employee and must maximize the usage of the employee's transferrable skills.** The reemployment plan must include at least the following:

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

(2) an inventory of the employee's technical skills, **transferrable skills,** physical and intellectual capacities, academic achievement, emotional condition, and family support;

(3) a plan to acquire the occupational skills to be employable;

(4) the cost estimate of the reemployment plan, including provider fees; **and** [;] the **cost** [AMOUNT] of tuition, books, tools, and supplies, [;] transportation, [;] temporary lodging, [;] or job modification devices;

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

(6) the date **that** the plan will commence;

(7) the estimated time of medical stability as predicted by **a treating physician or by a physician who has examined the employee at the request of the employer or the board, or by referral of** the **treating** physician;

(8) a detailed description and plan schedule; and

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

* Sec. 4. AS 23.30.041(k) is amended to read:

(k) Benefits related to the reemployment plan may not extend past two years from date of plan approval or acceptance, whichever date occurs first, at which time the benefits expire. If an employee reaches medical stability before completion of the plan, temporary total disability benefits shall cease and permanent impairment benefits shall then be paid at the employee's temporary total disability rate. If the employee's permanent impairment benefits are exhausted before the completion or termination of the reemployment plan, the employer shall provide **compensation** [WAGES] equal to **70** [60] percent of the employee's spendable weekly wages, but not to exceed **105 percent of the average weekly wage** [$525], until the completion or termination of the plan, **except that any compensation paid under this subsection is reduced by wages earned by the employee while participating in the plan to the extent that the wages earned, when combined with the compensation paid under this subsection, exceed the employee's temporary total disability rate. If permanent partial disability benefits have been paid in a lump sum before the employee requested or was found eligible for reemployment benefits, payment of benefits under this subsection is suspended until permanent partial disability benefits would have ceased, had those benefits been paid at the employee's temporary total disability rate, notwithstanding the provisions of AS 23.30.155(j).** A permanent impairment benefit remaining unpaid upon the completion or termination of the plan shall be paid to the employee in a single lump sum. **An employee may not be considered permanently totally disabled so long as the employee is involved in the rehabilitation process under this chapter.** The fees of the rehabilitation specialist or rehabilitation professional shall be paid by the employer and may not be included in determining the cost of the reemployment plan.

* Sec. 5. AS 23.30.041(l) is amended to read:

(l) The cost of the reemployment plan incurred under this section shall be the

responsibility of the employer, shall be paid on an expense incurred basis, and may not exceed $13,300 [$10,000].

* Sec. 6. AS 23.30.041(n) is amended to read:

(n) After the employee has elected to participate in reemployment benefits, if the employer believes the employee has not cooperated, the employer may terminate reemployment benefits on the date of noncooperation. Noncooperation means

(1) unreasonable failure to

(A) [(1)] keep appointments;

(B) [(2)] maintain passing grades;

(C) [(3)] attend designated programs;

(D) [(4)] maintain contact with the rehabilitation specialist;

(E) [(5)] cooperate with the rehabilitation specialist in developing a reemployment plan and participating in activities relating to reemployability on a full-time basis;

(F) [(6)] comply with the employee's responsibilities outlined in the reemployment plan; or

(G) [(7)] participate in any planned reemployment activity as determined by the administrator; or

(2) failure to give written notice to the employer of the employee's choice of rehabilitation specialists within 15 days after receiving notice of eligibility for benefits from the administrator as required by (g) of this section.

* Sec. 7. AS 23.30.041 is amended by adding a new subsection to read:

(r) Notwithstanding AS 23.30.012, an employee may waive, at any time, any benefits or rights under this section, including an eligibility evaluation and benefits related to a reemployment plan. To waive any benefits or rights under this section, an employee must file a statement under oath with the board to notify the parties of the waiver and to specify the scope of benefits or rights that the employee seeks to waive. The statement must be on a form prescribed or approved by the board. The board shall serve the notice of waiver on all parties to the claim within 10 days after filing. The waiver is effective upon service to the party. A waiver effective under this subsection discharges the liability of the employer for the benefits or rights contained

in this section. The waiver may not be modified under AS 23.30.130.

* Sec. 8. AS 23.30.095(f) is amended to read:

(f) All fees and other charges for medical treatment or service shall be subject to regulation by the board but may not exceed usual, customary, and reasonable fees for the treatment or service in the community in which it is rendered, as determined by the board. An employee may not be required to pay a fee or charge for medical treatment or service. **The board shall adopt updated usual, customary, and reasonable medical fee schedules at least once each year.**

* Sec. 9. AS 23.30.095 is amended by adding new subsections to read:

(l) An employer shall pay an employee's bills for medical treatment under this chapter, excluding prescription charges or transportation for medical treatment, within 30 days after the date that the employer receives the health care provider's bill or a completed report, whichever is later.

(m) Unless the employer controverts a charge, an employer shall reimburse an employee's prescription charges under this chapter within 30 days after the employer received the health care provider's completed report and an itemization of the prescription charges for the employee. Unless the employer controverts a charge, an employer shall reimburse any transportation expenses for medical treatment under this chapter within 30 days after the employer received the health care provider's completed report and an itemization of the dates, destination, and transportation expenses for each date of travel for medical treatment. If the employer does not plan to make or does not make payment or reimbursement in full as required by this subsection, the employer shall notify in writing the employee and the employee's health care provider that payment will not be timely made and the reasons for the nonpayment. The notification must be provided on or before the date that payment is due under this subsection or (l) of this section.

* Sec. 10. AS 23.30.105(a) is amended to read:

(a) The right to compensation for disability under this chapter is barred unless a claim for it is filed within two years after the employee has knowledge of the nature of the employee's disability and its relation to the employment and after disablement. However, the maximum time for filing the claim in any event other than arising out

of an occupational disease shall be four years from the date of injury, and the right to compensation for death is barred unless a claim therefor is filed within one year after the death, except that if payment of compensation has been made without an award on account of the injury or death, a claim may be filed within two years after the date of the last payment of benefits under AS 23.30.041, 23.30.180 [AS 23.30.180], 23.30.185, 23.30.190, 23.30.200, or 23.30.215. It is additionally provided that, in the case of latent defects pertinent to and causing compensable disability, the injured employee has full right to claim as shall be determined by the board, time limitations notwithstanding.

* Sec. 11. AS 23.30.107(a) is amended to read:

(a) Upon written request, an employee shall provide written authority to the employer, carrier, rehabilitation specialist, or reemployment benefits administrator to obtain medical and rehabilitation information relative to the employee's injury. The request must include notice of the employee's right to file a petition for a protective order with the board and must be served by certified mail to the employee's address on the notice of injury or by hand delivery to the employee.

* Sec. 12. AS 23.30 is amended by adding a new section to read:

Sec. 23.30.108. Prehearings on discovery matters; objections to requests for release of information; sanctions for noncompliance. (a) If an employee objects to a request for written authority under AS 23.30.107, the employee must file a petition with the board seeking a protective order within 14 days after service of the request. If the employee fails to file a petition and fails to deliver the written authority as required by AS 23.30.107 within 14 days after service of the request, the employee's rights to benefits under this chapter are suspended until the written authority is delivered.

(b) If a petition seeking a protective order is filed, the board shall set a prehearing within 21 days after the filing date of the petition. At a prehearing conducted by the board's designee, the board's designee has the authority to resolve disputes concerning the written authority. If the board or the board's designee orders delivery of the written authority and if the employee refuses to deliver it within 10 days after being ordered to do so, the employee's rights to benefits under this chapter

are suspended until the written authority is delivered. During any period of suspension under this subsection, the employee's benefits under this chapter are forfeited unless the board, or the court determining an action brought for the recovery of damages under this chapter, determines that good cause existed for the refusal to provide the written authority.

(c) At a prehearing on discovery matters conducted by the board's designee, the board's designee shall direct parties to sign releases or produce documents, or both, if the parties present releases or documents that are likely to lead to admissible evidence relative to an employee's injury. If a party refuses to comply with an order by the board's designee or the board concerning discovery matters, the board may impose appropriate sanctions in addition to any forfeiture of benefits, including dismissing the party's claim, petition, or defense. If a discovery dispute comes before the board for review of a determination by the board's designee, the board may not consider any evidence or argument that was not presented to the board's designee, but shall determine the issue solely on the basis of the written record. The decision by the board on a discovery dispute shall be made within 30 days. The board shall uphold the designee's decision except when the board's designee's determination is an abuse of discretion.

* **Sec. 13.** AS 23.30.110 is amended by adding a new subsection to read:

(h) The filing of a hearing request under (c) of this section suspends the running of the two-year time period specified in (c) of this section. However, if the employee subsequently requests a continuance of the hearing and the request is approved by the board, the granting of the continuance renders the request for hearing inoperative, and the two-year time period specified in (c) of this section continues to run again from the date of the board's notice to the employee of the board's granting of the continuance and of its effect. If the employee fails to again request a hearing before the conclusion of the two-year time period in (c) of this section, the claim is denied.

* **Sec. 14.** AS 23.30.155 is amended by adding a new subsection to read:

(p) An employer shall pay interest on compensation that is not paid when due. Interest required under this subsection accrues at the rate specified in AS 09.30.070(a)

that is in effect on the date the compensation is due.

* Sec. 15. AS 23.30.175(a) is amended to read:

(a) The weekly rate of compensation for disability or death may not exceed **the maximum compensation rate, may not be less than 22 percent of the maximum compensation rate,** [$700] and initially may not be less than $110. However, if the board determines that the employee's spendable weekly wages are less than $110 a week as computed under AS 23.30.220, or less than **22 percent of the maximum compensation rate** [$154] a week in the case of an employee who has furnished documentary proof of the employee's wages, it shall issue an order adjusting the weekly rate of compensation to a rate equal to the employee's spendable weekly wages. If the employer can verify that the employee's spendable weekly wages are less than **22 percent of the maximum compensation rate** [$154], the employer may adjust the weekly rate of compensation to a rate equal to the employee's spendable weekly wages without an order of the board. If the employee's spendable weekly wages are greater than **22 percent of the maximum compensation rate** [$154], but 80 percent of the employee's spendable weekly wages is less than **22 percent of the maximum compensation rate** [$154], the employee's weekly rate of compensation shall be **22 percent of the maximum compensation rate** [$154]. Prior payments made in excess of the adjusted rate shall be deducted from the unpaid compensation in the manner the board determines. In any case, the employer shall pay timely compensation. **In this subsection, "maximum compensation rate" means 120 percent of the average weekly wage, calculated under (d) of this section, applicable on the date of injury of the employee.**

* Sec. 16. AS 23.30.175 is amended by adding a new subsection to read:

(d) By December 1 of each year, the commissioner shall determine the average weekly wage in this state by dividing the average annual wage in this state for the preceding calendar year by 52. The resulting figure is the average weekly wage in this state applicable for the period beginning January 1 and ending December 31 of the following calendar year. The average annual wage calculation required under this subsection shall include the wages of all employees in the state, both public and private, who are covered by this chapter.

* Sec. 17. AS 23.30.190(a) is amended to read:

(a) In case of impairment partial in character but permanent in quality, and not resulting in permanent total disability, the compensation is $177,000 [$135,000] multiplied by the employee's percentage of permanent impairment of the whole person. The percentage of permanent impairment of the whole person is the percentage of impairment to the particular body part, system, or function converted to the percentage of impairment to the whole person as provided under (b) of this section. The compensation is payable in a single lump sum, except as otherwise provided in AS 23.30.041, but the compensation may not be discounted for any present value considerations.

* Sec. 18. AS 23.30.215(a) is amended to read:

(a) If the injury causes death, the compensation is known as a death benefit and is payable in the following amounts to or for the benefit of the following persons:

(1) reasonable and necessary funeral expenses not exceeding $3,300 [$2,500];

(2) if there is a widow or widower or a child or children of the deceased, the following percentages of the spendable weekly wages of the deceased:

(A) 80 percent for the widow or widower with no children;

(B) 50 [40] percent for the widow or widower with one child and 40 percent for the child;

(C) 30 [25] percent for the widow or widower with two or more children and 70 [55] percent divided equally among the children;

(D) 100 [80] percent for an only child when there is no widow or widower;

(E) 100 [80] percent, divided equally, if there are two or more children and no widow or widower;

(3) if the widow or widower remarries, the widow or widower is entitled to be paid in one sum an amount equal to the compensation to which the widow or widower would otherwise be entitled in the two years commencing on the date of remarriage as full and final settlement of all sums due the widow or widower;

(4) if there is no widow or widower or child or children, then for the

support of father, mother, grandchildren, brothers and sisters, if dependent upon the deceased at the time of injury, 42 percent of the spendable weekly wage of the deceased to such beneficiaries, share and share alike, not to exceed $20,000 in the aggregate.

* Sec. 19. AS 23.30.220(a) is amended to read:

(a) Computation of compensation under this chapter shall be on the basis of an employee's spendable weekly wage at the time of injury. An employee's spendable weekly wage is the employee's gross weekly earnings minus payroll tax deductions. An employee's gross weekly earnings shall be calculated as follows:

(1) if at the time of injury the employee's earnings are calculated by the week, the weekly amount is the employee's gross weekly earnings;

(2) if at the time of injury the employee's earnings are calculated by the month, the employee's gross weekly earnings are the monthly earnings multiplied by 12 and divided by 52;

(3) if at the time of injury the employee's earnings are calculated by the year, the employee's gross weekly earnings are the yearly earnings divided by 52;

(4) if at the time of injury the

(A) employee's earnings are calculated by the day, hour, or by the output of the employee, the employee's gross weekly earnings are the employee's earnings most favorable to the employee computed by dividing by 13 the employee's earnings, [NOT] including overtime or premium pay, earned during any period of 13 consecutive calendar weeks within the 52 weeks immediately preceding the injury;

(B) employee has been employed for less than 13 calendar weeks immediately preceding the injury, then, notwithstanding (1) - (3) of this subsection and (A) of this paragraph, the employee's gross weekly earnings are computed by determining the amount that the employee would have earned, [NOT] including overtime or premium pay, had the employee been employed by the employer for 13 calendar weeks immediately preceding the injury and dividing this sum by 13;

(5) if at the time of injury the employee's earnings have not been fixed

or cannot be ascertained, the employee's earnings for the purpose of calculating compensation are the usual wage for similar services when the services are rendered by paid employees;

(6) if at the time of injury the employment is exclusively seasonal or temporary, then, notwithstanding (1) - (5) of this subsection, the gross weekly earnings are 1/50 [1/50th] of the total wages that the employee has earned from all occupations during the 12 calendar months [YEAR] immediately preceding the injury;

(7) when the employee is working under concurrent contracts with two or more employers, the employee's earnings from all employers is considered as if earned from the employer liable for compensation;

(8) if an employee when injured is a minor, an apprentice, or a trainee in a formal training program, as determined by the board, whose wages under normal conditions would increase during the period of disability, the projected increase may be considered by the board in computing the gross weekly earnings of the employee;

(9) if the employee is injured while performing duties as a volunteer ambulance attendant, volunteer police officer, or volunteer fire fighter, then, notwithstanding (1) - (6) of this subsection, the gross weekly earnings for calculating compensation shall be the minimum gross weekly earnings paid a full-time ambulance attendant, police officer, or fire fighter employed in the political subdivision where the injury occurred, or, if the political subdivision has no full-time ambulance attendants, police officers, or fire fighters, at a reasonable figure previously set by the political subdivision 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 work per week;

(10) if an employee is entitled to compensation under AS 23.30.180 and the board determines that calculation of the employee's gross weekly earnings under (1) - (7) of this subsection does not fairly reflect the employee's earnings during the period of disability, the board shall determine gross weekly earnings by considering the nature of the employee's work, work history, and resulting disability, but compensation calculated under this paragraph may not exceed the employee's gross weekly earnings at the time of injury.

* **Sec. 20.** The uncodified law of the State of Alaska is amended by adding a new section to read:

TRANSITION: REGULATIONS. The agency affected by the changes made by this Act may proceed to adopt regulations under AS 23.30.005 to implement the changes. The regulations take effect under AS 44.62 (Administrative Procedure Act), but not before the effective date of secs. 2 - 19 of this Act.

* **Sec. 21.** Section 20 of this Act takes effect immediately under AS 01.10.070(c).

* **Sec. 22.** Except as provided in sec. 21 of this Act, this Act takes effect July 1, 2000.

ALASKA STATE LEGISLATURE
HOUSE LABOR AND COMMERCE COMMITTEE

Representative Norman Rokeberg, Chairman
Representative Andrew Halcro, Vice-Chairman
Representative John Harris
Representative Lisa Murkowski
Representative Jerry Sanders
Representative Tom Brice
Representative Sharon Cissna

State Capitol
Juneau, AK 99801-1182
Telephone: (907) 465-4954
Fax: (907) 465-2040

HOUSE BILL 419

A COMMITTEE SUBSTITUE HAS BEEN REQUESTED FOR THIS BILL AND WILL BE DELIVERED AS SOON AS IT IS RECEIVED FROM LEGAL SERVICES.

The Department of Labor and Workforce Development is preparing a sectional analysis of the legislation and it will also be delivered as soon as it is received.

ALASKA STATE LEGISLATURE
HOUSE LABOR AND COMMERCE COMMITTEE

Representative Norman Rokeberg, Chairman
Representative Andrew Halcro, Vice-Chairman
Representative John Harris
Representative Lisa Murkowski
Representative Jerry Sanders
Representative Tom Brice
Representative Sharon Cissna

State Capitol
Juneau, AK 99801-1182
Telephone: (907) 465-4954
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SPONSOR STATEMENT
HOUSE BILL 419
WORKER'S COMPENSATION

The House Labor and Commerce Committee introduced HB 419 at the request of the Ad Hoc Committee on Workers Comp and the Department of Labor & Workforce Development. The bill updates and revises Alaska's Worker's Compensation law that was last extensively revised in 1988.

The Ad Hoc Committee on Workers Comp consists of representatives from management and labor. This committee reviews worker's comp laws and suggests necessary changes. The bill before you is a result of such review.

Workers' compensation is a system that compensated a worker for on-the-job injuries not proximately caused by the worker. It is meant to provide worker protection when that worker is injured on the job.

Among the changes set forth in HB 419 are: (1) an intent section so that the Legislature's thoughts on worker's compensation are plainly set forth; (2) assurance of continuous employee participation in any reemployment plan; (3) sets forth that the average weekly wage amount is tied to a percent rather than stated amount; (4) mandate of an annual update of the usual, customary and reasonable medical fee schedules; (5) formula for exact weekly compensation in statute so the worker's compensation statute may change as wages change in Alaska; and (6) raises from $135,000 to $177,000 the ceiling amount that is used to determine a disability payment.

The Legislative Audit Division recently released a special report on the Workers' Compensation Division. An area of concern was the cap on injury awards and burial costs as set out in the 1988 statute. Legislative Audit indicated that the benefits have eroded over time by inflation. The report also points out that the main thrust of the 1988 statute has been accomplished with workers compensation insurance rates falling 41.5% since 1989. Legislative Audit further estimates that the whole body value of $135,000, with inflation, should be around $189,600, more than the $177,000 agreed to in comprises made by the Ad Hoc committee.

The overall goal of this legislation is to increase the caps (i.e., increase worker benefits), streamline the system, provide the Division with more tools, and provide the employer and the employee with a workers' compensation system fair to all.

ED01:3/07/00

ALASKA
LABOR-MANAGEMENT AD HOC COMMITTEE
ON WORKERS' COMPENSATION

February 1, 2000

The Honorable Norman Rokeberg
Alaska State Legislature
State Capitol
Juneau, Alaska 99801-1182

Dear Representative Rokeberg:

The Alaska Labor-Management Ad Hoc Committee on Workers' Compensation is in its eighteenth year of service as a private citizen initiative group formed to fairly address concerns in regard to the Alaska Workers' Compensation system. It was through the efforts of the Ad Hoc Committee that major legislative reform was passed in 1988 and as well as continuing reform in 1995. Those measures have helped to stabilized the Workers' Compensation system for employers and employees .

The Ad Hoc Committee has been meeting again in an attempt to work through some issues related to workers' compensation. We have recently reached a resolution on several key items that form the basis of our proposed 2000 legislation. Our proposed legislation has had a preliminary review by the Division of Workers' Compensation. A summary of items in the bill is attached. Key elements of the bill include:

- Increases in basic benefits consistent with changes in wages. Future maximum and minimum weekly benefits will be tied to the average weekly wage.
- Increases to the maximum weekly benefit under the death benefit as the number of dependents increase.
- Expands wage calculations to include overtime wages.
- Increases the Vocational Rehabilitation Stipend from 60% to 70 % of the average weekly spendable wage.
- Enhances the Vocational Rehabilitation process by making the process more timely, avoiding duplication of benefits and setting a reasonable maximum time period to obtain benefits.

- Defines process and time frame in which to obtain reasonable medical releases.
- Clarifies a reasonable time frame in with a claim can be brought forward.

We thank you for your patience in allowing the Ad Hoc Committee to prepare our agreement and we look forward to your continued support in the future. Should you have any questions or require further information, do not hesitate to contact us.

Sincerely yours,

Willem Van Hemert
CRW Engineering Group

Kevin Dougherty
District Council of Laborers

Sally Ann Carey
Natchiq, Inc

Jim Robison
Former Commissioner of Labor

Judy Peterson & Mary Shields
Northwest Technical Services

John Giuchici
International Brotherhood of Electrical Workers

John Garrett
Alyeska Pipeline

David Ford
Alaska Ironworkers

cc: Governor Tony Knowles
Senator Jerry Mackie
Senator Tim Kelly
Representative Andrew Halcro

LEGISLATIVE AGENDA – YEAR 2000

MANAGEMENT

- Annual Updates – Medical Fee Schedule (09.30.070(a))
- Change Interest Rate to State Specified (095f)
- Medical Bill Payment Within 30 Days (095c)
- Clarification of Time Limitation on Bringing a Claim (110c)
- Reasonable Medical Releases (107a)
- Vocational Rehabilitation
  - Worker Right to Waive (041c)
  - Notice to Accept Re-Employment Benefit (041g)
    - Failure constitutes noncooperation (041n)
  - Transferable Skills (041h(2) / 041l)
  - Medical Stability by an Examining Physician (041h 7)
  - Wages Reduce Benefits Above TTD Limits (041K)
  - Credit for PPI if paid out lump sum (041k)
  - No PTD Benefits During Rehabilitation (041k)
  - 2- year limitation on requesting Voc Rehab (105a)

LABOR

- Increase PPI - $177,000 (190a)
- Increase Death Benefit to 100% (215a)
  - Increase Funeral Expense - $3,300
- Wage Calculations to Include Overtime (220a)
- Establish Weekly Max at 120% of Average Weekly Wage (175a)
- Establish Weekly Min at 22% of Weekly Max (175a)
- Increase Rehabilitation Stipend to 70% (041k)
- Increase Vocational Rehab to $13,300 (041l)
- Clarify Seasonal / Temporary Worker (220a)
  - Change to Model Act – Last 12 Months

From: Department of Labor & Workforce Development
Date: March 7, 2000

HB 419 Sectional analysis

Section 1 states the legislature's intent to provide quick, efficient, fair, and predictable benefits; its intent that the statute not be construed by the courts in any party's favor; and its intent to address the specific topics of sections 2-23.

Section 2 amends AS 23.30.041(g) to increase the deadline for the employee's choice of a rehabilitation specialist from 10 to 15 days, but subjects the employee to the suspension of benefits for failure to give the employer timely notice of the choice of specialist.

Section 3 amends AS 23.30.041(h) to require reemployment plans to require continuous participation by employees and to maximize the use of the employees' transferable skills. It also permits an employee's medical stability to be determined by a Board-appointed physician or a physician retained by the employer, as well as by a treating physician.

Section 4 amends AS 23.30.041(k) to change reemployment "wages" into a form of "compensation", allowing certain offsets and reductions. It increases the weekly compensation rate under this section from 60% to 70% of employee's spendable weekly wage. It also provides an offset of compensation when compensation and wages exceed 80% of the employee's spendable weekly wage. It suspends compensation when a lump-sum permanent partial impairment (PPI) payment has been made, until that PPI amount would have been paid out as weekly compensation benefits. It also bars entitlement to permanent total disability (PTD) benefits while an employee is engaged in a reemployment process, changing the law as interpreted by the Alaska Supreme Court decision in Meek v. Unocal Corp., 914 P.2d. 1276 (Alaska 1996).

Section 5 amends AS 23.30.041(l) to increase the maximum cost of a reemployment plan from $10,000 to $13,300.

Section 6 amends AS 23.30.041(n) to permit an employer to suspend benefits if an employee fails to give the employer timely notice of the employee's choice of rehabilitation specialist under AS 23.30.041(g).

Section 7 adds a new subsection, AS 23.30.041(r), to permit an employee to waive reemployment benefits at any time, without having to go through a reemployment evaluation, and without having to go through a formal Compromise and Release (C&R) agreement. It removes the requirement for Board approval of the waiver under AS 23.30.012, and removes the Board's ability to modify the waiver under AS 23.30.130.

Section 8 amends AS 23.30.095(f) to require the usual, customary, and reasonable medical fee schedule to be updated at least once a year.

Section 9 adds new subsections, AS 23.30.095(l)&(m), increasing the deadline for the payment of medical bills from 14 to 30 days in conformity with the national industry standard. This changes the law resulting from the Alaska Supreme Court decision in Childs v. Copper Valley Electrical Association, 860 P.2d 1184 (Alaska 1993).

Section 10 amends AS 23.30.105(a) to place a two-year time limit on the employee's right to request reemployment benefits.

Section 11 amends AS 23.30.107(a) to require requests for medical releases to be in writing, and to give notice of the employee's right to request a protective order from the Board.

Section 12 adds a new section, AS 23.30.108, requiring decisions concerning medical releases to be made in prehearing conferences by a Board designee, with a limited right of appeal to the Board for abuse of discretion.

Section 13 adds a new subsection, AS 23.30.110(h), which restarts a two-year statute of limitations on an employee's right to pursue a claim, whenever the Board continues or cancels a hearing. This changes the law from the Alaska Supreme Court decisions in Tipton v. ARCO Alaska, Inc., 922 P.2d 910 (Alaska 1996) and Huston v. Coho Electric, 923 P. 2d 818 (Alaska 1996).

Section 14 adds a new subsection, AS 23.30.155(p), requiring interest on late benefits to be paid at the rate used by the Alaska courts.

Section 15 amends AS 23.30.175(a), tying future maximum and minimum weekly compensation rates to the Alaska average weekly wage rate of the year preceding the injury. The maximum compensation rate would be 122% of the Alaska average weekly wage rate, and the minimum compensation rate would be 22% of the maximum compensation rate.

Section 16 adds a new section, AS 23.30.175(d), requiring the annual determination of Alaska average weekly wage.

Section 17 amends AS 23.30.190(a) to increase the whole-person value for permanent partial impairment ratings from $135,000 to $177,000.

Section 18 amends AS 23.30.215(a) to increase funeral expense benefits from $2,500 to $3,300. It also increases the combined benefits for a widow/widower with one child from 80% to 90% of the spendable weekly wage. It increases the combined benefits of a widow/widower with two children from 80% to 100% of the spendable weekly wage. It increases the benefits of orphans from 80% to 100% of the spendable weekly wage.

Section 19 amends AS 23.30.220(a) to incorporate overtime wages into the calculation of an employee's gross weekly wages. It bases the calculation of seasonal and temporary workers' gross weekly wages on earnings from the 12 months immediately preceding the injury, instead of from the previous calendar year.

Section 20 makes sections 2 & 6-13 retroactive in application, and sections 3-5 & 14-19 effective prospectively from July 1, 2000.

Section 21 authorizes the department to adopt regulations and/or emergency regulations necessary to carry out the changes in the statute.

Section 22 permits the department to begin adopting necessary regulations immediately.

Section 23 provides an effective date of July 1, 2000.

From: Department of Labor & Workforce Development
Date: March 7, 2000

HB 419
Side-by-Side Analysis

SB 278 Section & Alaska Statute Citation	Proposed Law	Present Law
Section 1	Quick, efficient, fair, etc.	The same.
Section 2 amends AS 23.30.041(g)	The employee's choice of a rehabilitation specialist must be made within 15 days.	The employee must notify the employer of a choice of a rehabilitation specialist within 10 days.
	Allows suspension of benefits for failure to give the employer timely notice of the choice of specialist.	There is no penalty for late notification.
Section 3 amends AS 23.30.041(h)	Reemployment plans require continuous participation by employees	Reemployment plans require a defined schedule, not continuous participation.
	Plans must maximize use of the employees' transferable skills.	An employee's technical skills are simply one element of the plan.
	An employee's medical stability to be determined by a Board-appointed physician or a physician retained by the employer, as well as by a treating physician.	An employee's medical stability is to be determined by a treating physician.
Section 4 amends AS 23.30.041(k)	Provides benefits in this section be called "compensation."	Benefits under this section are termed "wages."
	Increases the weekly benefit rate to 70% of employee's spendable weekly wage.	Weekly compensation under this section is 60% of the employee's spendable weekly wage.
	Allows an offset or reduction of compensation when compensation and wages exceed 80% of the spendable weekly wage.	Benefits are not reduced for wages earned for work in a reemployment plan.

	It suspends compensation when a lump-sum permanent partial impairment (PPI) payment has been made, until that PPI amount would have been paid out as weekly compensation benefits.	Uncertain if a PPI lump-sum paid before rehabilitation may be offset against benefits received during the reemployment plan.
	Bars entitlement to permanent total disability (PTD) benefits while an employee is engaged in the reemployment process, changing the law as interpreted by the Alaska Supreme Court decision in Meek v. Unocal.	An employee may be entitled to PTD benefits while an employee is engaged in the reemployment process, when no compensation is provided.
Section 5 amends AS 23.30.041(l)	Increases the maximum cost of a reemployment plan to $13,300.	The maximum cost of a reemployment plan is $10,000.
Section 6 amends AS 23.30.041(n)	Permits an employer to suspend benefits if an employee fails to give the employer timely notice of the employee's choice of rehabilitation specialist under AS 23.30.041(g).	There is no penalty if an employee fails to give timely notice to the employer, concerning the employee's choice of rehabilitation specialist under AS 23.30.041(g).
Section 7 adds a new subsection, AS 23.30.041(r)	Permits an employee to waive reemployment benefits at any time, without having to go through a formal Compromise and Release (C&R) agreement.	An employee's entitlement to reemployment benefits may not be forfeited or waived without Board approval of a formal C&R agreement.
Section 8 amends AS 23.30.095(f)	Requires the usual, customary and reasonable (UCR) medical fee schedule to be updated at least once a year.	The UCR medical fee schedule has no specific updating requirement.

Section 9 adds new subsections, AS 23.30.095(l)&(m)	Delays the deadline for the payment of medical bills to 30 days. This changes the law resulting from the Alaska Supreme Court decision in Childs v. Copper Valley Electrical Association.	The Alaska Supreme Court decided in Childs that payment on medical bills is due within 14 days under AS 23.30.155.
Section 10 amends AS 23.30.105(a)	Places a two-year time limit on the employee's right to request reemployment benefits.	AS 23.30.105(a) does not list reemployment benefits under the provision placing a two-year time limit on requests for benefits.
Section 11 amends AS 23.30.107(a)	Requires all requests for medical releases to be in writing, and to give notice of the employee's right to request a protective order from the Board.	Does not require requests for medical releases to be in any particular form; and does not require the employer to give notice of the employee's right to request a protective order from the Board.
Section 12 adds a new section, AS 23.30.108	Requires decisions concerning medical releases to be made in prehearing conferences by a Board designee, with a limited right of appeal to the Board for abuse of discretion.	Decisions concerning medical releases may be made in prehearing conferences or by the Board in a hearing. The Board reviews prehearing release decisions under a "preponderance of the evidence" standard.
Section 13 adds a new subsection, AS 23.30.110(h)	Restarts a two-year statute of limitations on an employee's right to pursue a claim, whenever the Board continues or cancels a hearing. This changes the law from the Alaska Supreme Court decisions in Tipton v. ARCO and Huston v. Coho.	The Alaska Supreme Court decided in the Tipton and Huston cases, that a request for a hearing completely stops the running of.110(c), the two-year statute of limitations on an employee's right to pursue a claim.
Section 14 adds a new subsection, AS 23.30.155(p)	Requires interest on late benefits to be paid at the rate used by the Alaska courts (3% above the January 2d prime).	Interest on late benefits are paid at the rate of 10.5 % under A S 45.45.010.

Section 15 amends AS 23.30.175(a)	Ties future maximum and minimum weekly compensation rates to the Alaska average weekly wage rate of the year preceding the injury. The maximum compensation rate would be 122% of the Alaska average weekly wage rate, and the minimum compensation rate would be 22% of the maximum compensation rate.	Maximum weekly compensation rate is $700 per week. Minimum compensation rate is $154/$110.
Section 16 adds a new section, AS 23.30.175(d)	Requires the annual determination of Alaska average weekly wage.	N/A
Section 17 amends AS 23.30.190(a)	Increases the whole-person value for permanent partial impairment ratings to $177,000.	The whole-person value for a permanent partial impairment rating is $135,000.
Section 18 amends AS 23.30.215(a)	Increases funeral expense benefits to $3,300.	Funeral expense benefits are $2,500.
	It increases the combined benefits for a widow / widower with one child to 90% of the spendable weekly wage.	Combined benefits for a widow/widower with one child are 80% of the spendable weekly wage.
	It increases the combined benefits of a widow/widower with two children to 100% of the spendable weekly wage.	The combined benefits of a widow/widower with two children are 80% of the spendable weekly wage.
	It increases the benefits of orphans to 100% of the spendable weekly wage.	The benefits of orphans are 80% of the spendable weekly wage.
Section 19 amends AS 23.30.220(a)	Incorporates overtime wages into the calculation of an employee's gross weekly wages.	Overtime and premium pay are excluded from the calculation of an employee's gross weekly wages.

It bases the calculation of seasonal and temporary workers' gross weekly wages on earnings from the 12 months immediately preceding the injury.

It bases the calculation of seasonal and temporary workers' gross weekly wages on earnings from the calendar year preceding the calendar year of injury.

Benefit	Present Law	proposed law
Medical benefits	Pays for all reasonable and necessary care, at the usual customary and reasonable fee schedule, within the statutory frequency standard.	Same as present law except that the usual customary and reasonable fee schedule will be updated once a year. (see sec. 8)
Temporary Total Disability (TTD) benefits	If the employee is disabled, under the law, he/she is paid 80% of their spendable (net) weekly wage through disability or medical stability.	Employee still paid 80% of their spendable weekly wage.
	This is determined by calculating the employee's gross weekly wage through formulas in AS 23.30.220(a). Overtime and premium pays are excluded in the employees gross weekly wage determination.	Overtime and premium pays are included in the calculation. (sec 19)
	This benefit is also subject to a maximum compensation rate of 700 and a minimum rate of 110/154 under AS 23.175.	The maximum and minimum compensation rates are indexed to Alaska average weekly wage (AAWW). The maximum rate is 120% ($772) of the AAWW and the minimum rate is 22% (170) of the maximum. (sec. 15)
Permanent Partial Impairment (PPI)	% of the whole person rating under the *AMA Guides* multiplied by $135,000. PPI is paid in a lump sum if employee is not in reemployment process or paid in weekly increments at TTD rate if in the reemployment process.	The multiplier is increased to $177,000. (sec 17)
Reemployment benefits (retraining benefits)	If the employee has a PPI or may have a PPI, and is unable to return to his/her work at the time of injury, or any work they have had in ten years preceding the injury, they are entitled to reemployment benefits .	Same as current law.
	Cost of retraining plan up to $10,000	Cost of plan up to $13,300. (sec. 5)

	PPI is paid out in weekly increments at 80% of spendable.	Same as current law.
	If PPI benefits are exhausted, employee is entitled to 60% of the spendable weekly wage (rehab stipend) through the completion of reemployment plan.	If PPI is exhausted, stipend is 70% of spendable wages. (sec 4)
	There is no offset for wages received as result of on the job training.	There is an offset of stipend if on job training wages and stipend are more than 80% of the spendable weekly wage.
	If PPI is paid in a lump sum prior to the employee requesting reemployment benefits, the employee is entitled to 60% stipend during the reemployment process.	If PPI is paid out in a lump sum prior to employee requesting reemployment benefits, the employee is not entitled to 70% stipend until after the PPI would have been paid out as weekly benefits.
	The employee may be entitled to permanent total disability (PTD) if no compensation is provided.	Bars payment of PTD during the reemployment process.
Permanent Total Disability	Paid compensation at 80% of the pendable weekly wage if employee is unable to perform suitable and gainful employment.	Same
Death Benefits	funeral benefits are paid up to $2,500 Widow/widower and dependents are entitled to 80% of the employee's spendable weekly wage.	funeral benefits are paid up to $3,300. (sec. 18) widow/widower is entitled to 80% of employee's spendable widow/widower with one dependent child is entitled to 90% of the employee's spendable weekly wage. (sec. 18) widow/widower with one dependent child is entitled to 90% of the employee's spendable weekly wage. (sec. 18)

widow/widower with two or more dependent children are entitled to 100% of the spendable weekly wage. (sec. 18)
orphans are entitled to 100% of spendable weekly wage. (Sec. 18)

Alaska Timber Insurance Exchange

2555 First Avenue
Ketchikan, Alaska 99901-5803
FAX (907) 225-9454
(907) 225-9451

March 20, 2000

Representative Norman Rokeberg
State Capitol, Room 24
Juneau, Alaska 99801-1182

Dear Representative Rokeberg:

Thank you for the opportunity to comment on the current bills addressing workers' compensation issues.

House Bill 378

Enclosed is a position paper expressing Alaska Timber Insurance Exchange's (ATIE) concerns about House Bill 378.

The ATIE Board of Governors has unanimously voted to oppose HB 378 and SB 272 in their current form.

The legislation, as it is currently worded, would result in double taxation. Insurance companies and employers will experience an adverse financial impact that will result in increased workers' compensation premiums to Alaskan employers without a corresponding increase in benefits paid to injured workers.

The ATIE Board of Governors also emphasizes their strong feeling that this bill establishes bad public policy by designating revenues to accounts established for departmental budgeting. This sacrifices legislative review and control.

House Bill 419

The increases to benefit levels are expected to cause premium levels to rise. However, ATIE has not done a formal analysis of the impact of HB 419 on premium levels.

I understand that in the past the National Council on Compensation Insurance (NCCI) has been requested by the Division of Workers' Compensation to provide

Alaska Timber Insurance Exchange

the expected impact to premium levels when benefit and other statute changes are proposed.

The premium increases will not affect all employers the same. Employers whose employees are involved in higher risk occupations such as logging, mining and construction may experience increases to their premiums that are greater than the average increase.

Also, depending upon what the overall impact to workers' compensation insurance rates are, the effective date of July 1, 2000 may cause hardship to employers who have bid jobs based upon existing workers' compensation insurance rates. A later effective date, such as October 1, 2000 or January 1, 2001 would have a less significant impact on Alaskan employers.

Thank you again for the opportunity to comment on these two pieces of legislation. Please do not hesitate to contact me if you have questions regarding ATIE's position on these bills.

Respectfully,

Michael D. Hinchen
General Manager/Controller

MH

Enclosure

Alaska Timber Insurance Exchange

Position Paper on HB 378/SB 272

What The Bill Will Do

A. Eliminate the 2.7% premium tax paid by insurance companies on the workers' compensation insurance they write.

Proceeds from this tax ($3.5 million annually) are currently deposited into the State General Fund.

B. Impose a user fee on all workers' compensation benefit payments made on behalf of an injured worker (medical, time-loss, vocational rehabilitation and legal payments).

All entities making workers' compensation benefit payments would be subject to the new user fee including corporate self-insureds, municipalities, the State and the Alaska Municipal League Joint Insurance Program.

The user fee would start out at 3.3% of benefit payments made and eventually decrease to 2.6% of benefit payments. The user fee will be phased-in for non-insurance companies.

C. The new user fees would be "designated program receipts" used to fund the Alaska OSHA and the Division of Workers' Compensation.

Funding for these divisions of the Alaska Department of Labor would be eliminated from General Fund expenditures.

Why ATIE Opposes HB 378/SB 272 In Its Current Form

A. <u>The new user fee results in double taxation.</u>

Insurers and employers should not be subject to the additional service fee with respect to claims on policies or portions policy periods where the payment of premium taxes under AS 21.09 has occurred.

Workers' compensation insurance premiums pay for losses (benefits paid to or on behalf of injured workers), claims administration costs and other administrative expenses.

Loss payments eventually make up 50 to 70 percent of premiums for any given policy year.

Revision Date: 03/20/00

Loss payments on some workers' compensation claims go on for many years after the policy year that premiums and premium taxes were paid.

ATIE and other insurers would be taxed on loss payments that have already been subject to premium tax.

B. Control of funding for these two divisions of the Department of Labor is taken away from the Alaska Legislature. This would be bad public policy.

C. There will be a significant adverse financial impact to ATIE.

With passage of the bill ATIE (and other insurance companies) will need to accrue an expense and a liability for future user fee payments based on loss reserves which relate to 1999 and prior policy years.

As a result of double taxation ATIE's policyholders' surplus would be immediately reduced by 8%.

Projected net income (dividends) for 2000 would be reduced by 13%.

Substitution of user fees for premium taxes for claims occurring in 2000 would reduce projected net income by an additional 2%.

D. A Conflict of Interest Is Created.

Funding for the Division of Workers' Compensation would be dependent on workers' compensation benefit payments.

There would be pressure for the Alaska Workers' Compensation Board to rule against an employer when a disputed claim is heard before the Board, i.e. the higher the benefit payments to injured employees the greater the level of funding that would be received.

E. This bill does not reduce the overall amount spent by the State of Alaska. The source of funding for Alaska OSHA and the Division of Workers' Compensation is just being shifted from the General Fund to Designated Program Receipts.

F. There is no guarantee that the user fees will not be increased in the future if the fees collected are not sufficient to fund Alaska OSHA and the Division of Workers' Compensation.

G. Workers' compensation rates will rise as a result of increased expenses.

Revision Date: 03/20/00

Paul

National Council on Compensation Insurance, Inc.

Carolyn Pearl, CPCU
State Relations Executive

(907) 465-2797
Via Facsimile

February 2, 2000

Paul Grossi
Director, Workers Compensation Division
State of Alaska
Department of Labor
P.O. Box 25512
Juneau, AK 99802-5512

Re: Proposed Alaska Benefit Changes

Dear Paul:

As you requested, NCCI has reviewed the impact of the workers compensation benefits changes under consideration in Alaska.

Based on the most recent information on the type, distribution and severity of injuries, and the nature of the proposed changes, we have determined that the impact of these changes on overall costs would be between 7.7% and 8.9%.

A number of the proposed changes are difficult to quantify, but could have an impact over time. The ultimate cost will depend on several factors including how any law change is enacted, interpreted and utilized.

I hope this information is helpful, however, please contact me if you have any questions, need additional information or if this proposal becomes legislation.

Sincerely,

Carolyn Pearl, CPCU
State Relations Executive

1001 Bishop St., Suite 740 Pacific Tower, Honolulu, HI 96813
808-524-6196 • E-mail: Carolyn_Pearl@NCCI.com

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Tel (907) 277-8000
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March 22, 2000

Via Fax
465-2040

Members of House Labor and Commerce Committee
Alaska State Legislature
c/o The Honorable Representative Norman Rokeberg
State Capital
Juneau, Alaska 99801-1182

Re: House Bill 419 - Testimony of Michael J. Jensen at March 20, 2000 hearing.

To Whom It May Concern:

For the past two years numerous hearings were held with Staff from the Governor's office and members of the workers' compensation Board. At these hearings many injured workers testified relating to the Governor and the Board their personal horror stories of neglect, nonpayment of benefits, invasion of privacy, loss of dignity and other complaints. I had hoped that after listening to these stories from all these workers and their families that legislation would have been offered to address their concerns.

These workers did not come to the Governor or the Board with a tin cup hoping for a handout. They simply wanted changes to the Act which would address their concerns. Regrettably this proposed legislation does not do this.

I do not want to condemn this effort. But I do the result. However, I wish to suggest ways to improve this legislation to meet some of the concerns expressed by these workers and the most recent legislative audit which found:

> Circumstances have developed that limit the protection the legislature meant to be in place, and strictly enforced, to the benefit of workers.

At p.19

> ...such circumstances, that we believe are an unintended by-product of the 1988 amendments, have resulted in a situation where more consideration is provided to employers and insurance companies than to injured workers.

At p.19.

I want to thank the ad hoc committee and Division of Workers' Compensation for their efforts on behalf of workers who have not seen an increase in benefits for almost 12 years. The labor members were able to take a step in the right direction as far as increasing TTD, PPI and death benefits. Regrettably what insurers are asking workers to give up in exchange for these amendments needs to be addressed.

I want to address only several sections which this proposed legislature seeks to amend namely sections 041(c) and 107.

A. Although the legislative audit found:

> From our review, it appears the statute has succeeded in limiting access to reemployment benefits.

At p.35.

Instead of addressing this concern the proposed amendment to 041(c) adopts yet another way for workers to lose access to rehabilitation benefits. They will be asked to do this without any guarantee that such waiver is 1) informed and 2) made only with an appreciation of the seriousness of their disability. Workers need to have an appreciation of the seriousness of the injury before any waiver.

B. Although the audit found:

> Provisions put in the 1998 statutes as part of a legislative desire to control, if not lower workers' compensation insurance rates have, over time, become increasingly contrary to the interests of injured workers.

Summary of Audit Report at p.1.

These provisions do not address this concern. Instead these amendments add new ways for insurers to cut off workers' compensation benefits.

C. Although the audit found that workers were frustrated with the complexity of the system, regulations and "associated timelines" at p.23. These proposed amendments do not address this concern. Instead they add at least two new time limits making the Act even more complex.

D. Although workers repeatedly expressed their frustration with the scope of information insurers sought to be released and the invasion of privacy issue

involved these amendments give a tin ear to these concerns. Instead they add an additional sanction and new time limits.

These amendments leave decisions up to prehearing officers who in the past have been unaware of Board's decisions which clearly express the scope of permissible releases. The prehearing officers, with training, could be made aware of these past Board decisions. These decisions had made a lot of progress in protecting the valuable right of privacy and still insured adequate discovery for the insurers. But the Division has not had the funding to provide such training and there is no assurance that the prehearing officers will comply with these Board decisions.

In a recent example an unrepresented claimant was asked to release medical reports including those pertaining to a rape of which she had been a victim long before. The prehearing officer allowed release of these records. When this was brought to the attention of the past Division's Chief of Adjudications in a June 4, 1999 letter he could only respond that continuing education for the prehearing officer could not be provided due to lack of funding. No corrective action was taken.

This provision allowing for benefits to be cut off should be amended. The current system of review by the Board is the better alternative.

I respectfully request that the Committee members revisit the proposed amendments to 041(c), 041(n) and 170(a) and by amendment remove them. Such amendments would go a long way to improving this proposed legislation while not further eroding to an intolerable degree the disparities the legislative audit documents.

Thank you for your attention.

Michael J. Jensen

Subject: [Fwd: HB419]
Date: Thu, 23 Mar 2000 10:38:37 -0900
From: Sue Roth <sue_roth@admin.state.ak.us>
To: Representative_Norman_Rokeberg@legis.state.ak.us

-------- Original Message --------
Subject: HB419
Date: Thu, 23 Mar 2000 10:32:13 -0900
From: Sue Roth <sue_roth@admin.state.ak.us>
To: Represenative_Norman_Rokeberg@legis.state.ak.us

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Intracorp
175 So. Franklin, Ste. 319
Juneau, AK 99801

March 23, 2000

Representative Norman Rokeberg
House Labor & Commerce
Standing Committee

RE: HB419

Dear Rep. Rokeberg and Members of Labor & Commerce Standing Committee,

I am a Disability Management Specialist who has been providing vocational services to Alaska injured workers since 1983.

I would like to address House Bill 419, Sec. 7, (r). I am in favor of this section, as it truly provides the injured worker to make the choice of whether he wants to receive reemployment benefits. One of the most frustrating parts of my job is to try to provide services to an injured worker who really does not want vocational assistance. Many injured workers do not function well in a system that imposes timelines and close monitoring. I repeatedly hear, "I have been able to get my job all my life, and I don't need any help now", but yet they are required or feel pressured to participate in plan development.

The fear that insurance companies will prematurely request someone to waive their benefits is unwarranted, as the section clearly states that the form will be prescribed or approved by the Board. I do not believe that the Board would allow an individual to waive rights prior to medical stability or an indication that a determination can be made as to whether the worker can return to his/her job at time of injury.

Thank you for the opportunity to have input on this bill.

Cordially,

B. Sue Roth, M.Ed, CRC, LPC
Disability Management Specialist

Subject: STOP ALL BILLS THAT HURT INJURED WORKERS!!
Date: Wed, 22 Mar 2000 21:40:28 -0900
From: RF <rngr@gci.net>
To: Representative_Norman_Rokeberg@legis.state.ak.us

To All Senators.doc	**Name:** To All Senators.doc **Type:** Winword File (application/msword) **Encoding:** base64 **Download Status:** Not downloaded with message

To All Senators & Congressmen;

I do not support any of the House or Senate bills that is dealing with Workers Compensation and SHOULD NOT BE APPROVED.

It will severely undermine the rights of INJURED WORKERS and their rights to receive benefits and compensation and will further reduce the ability to meet the needs of Injured Workers.

I am a prime example of the law as it now stands, and how the insurance companies rule the state. As most of you know I was injured Oct.16, 1998 and not one person helped me after my injury with making a claim after the pain was so bad and went back to the doctor and they said there was no evidence.

After a MRI was done there was evidence of my injury and the insurance company wrote there was no evidence to support the claim. I have copies of every paper to back up this evidence. Then the doctor was told that he would not get paid anymore and he told me that he had to drop me. Left on the street basically with no medical and injured. If it were not for me being a Native I would not have gotten treatment.

Then the insurance company sending me to an EIME and come to find out she is an insurance lover, known by all in Anchorage, but no one will do anything about that. And she cannot read an MRI, for she would have seen the injury. Called it a neck strain and only needed therapy.

Now, it has taken a SIME that cost $6,093.00 and a year and half later to find out the same thing that's on the MRI. You see how the system works, so why don't you do something about it? Are you scared of something? Or are you being bought off like the doctors here in the Anchorage area?

This nonsense has to STOP NOW! People are suffering and you just stand around and look in the mirror. The Natives that live in villages do not know how to do lots of things so the insurance companies take advantage of that. That is pure and simple prejudice! And you all know it! SO PUT A STOP TO THIS INSANITY! This case of mine is going to make history here in Alaska, because I am going to let all the media know the TRUTH! The LEGISLATURE is not caring, does nothing to help injured workers except keep passing bills THAT HURT THE INJURED MORE!
What's the matter can't handle the truth?

Sincerely,

Robert M. Ferguson
16901 Meadow Creek Dr. #106
Eagle River, Alaska 99577

Cc: all legislatures
And any concerned

1165-4954

Alaska State Legislature

Please enter into the record my testimony to the House Labor & Commerce
committee name

committee on HB 419 Workers Comp. , dated 3/17/00 .
bill/subject

Committee - prior to endorsing these or any changes in the "Act" I request you obtain the tapes of meetings which took place in Anchorage in 1998-99 from the Governor as well as those of the Annual Board Meetings of the Workers Comp Board. The proposed changes by ASHOC ~~&~~ WC do not address the real issues. The Division of W/C are no more than glorified clerks. The system is run by the insurance companies.

(1) Injured Workers still can not get legal council - going up against the bottomless bank the insurers spend on their attorneys.

(2) The "Act" addresses "reasonable" customary fees for service" yet the insurers spend incredible amounts for Paid Medical opinions. Which most result in controversion.

(3) Even the "Safe guards" in the law to prosecute the insurer/adjuster for the various acts & breaking the law. The Division/Board does not charge the insurer & refer it to the Division of Insurance as provided by the Act. There is no balance in the Act! It is insurers that run the system. Again listen to the testimony on the tapes. Read the Act, Pray you never get injured on the job! Feel free to call me.

Signed: Barbara Beckman
Testifier

Representing (Optional)

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MTL SERVICES

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Fax

To:	Representative Norman Rokeberg	**From:**	Marjorie T. Linder
Fax:	(907) 465-2040	**Pages:**	3 to follow
Phone:	(800) 773-4968	**Date:**	03/20/00
Re:	Testimony you requested	**CC:**	[Click here and type name]

☐ **Urgent** ☐ **For Review** ☐ **Please Comment** ☐ **Please Reply** ☐ **Please Recycle**

• **Comments:**

Thank you for asking me to submit today's testimony to the House Labor and Commerce Committee regarding HB 419. I've also supplied an example of what a worker who waives the reemployment benefit before medical stability can't know that he is waiving. His PPI can not be defined until after medical stability. The length and cost of his reemployment plan can not be determined until his PPI is determined. I suspect this waiver business won't hold up in the courts.

Margie Linder

TO: Representative Norman Rokeberg
Chairman, House Labor and Commerce Committee
FR: Marjorie T. Linder, M.A., CRC
RE: Testimony regarding HB 419
DATE: March 20, 2000

I am Marjorie Linder, a vocational rehabilitation counselor in the workers' compensation system. **I served on the WCCA in 1988 and helped draft Section .041 of the current law.** Because of my past involvement, I offer a unique perspective. I know that I had good intentions with these law changes, but, like Frankenstein, I helped to create a monster.

In 1988, there was the perception that the law was unbalanced in favor of injured workers. Premiums were on the rise. Thus, the law was overhauled and, since then, **employers have enjoyed a 41.5% reduction in premiums,** according to the recent legislative audit. There is no crisis for employers.

Unfortunately, **injured workers have paid the price** for their employers' tremendous savings in workers' compensation insurance. Today, only 300 out of 28,000 workers injured each year qualify for the reemployment benefit. Both a laborer and an office worker receive as little as $9450 for a herniated disc despite the disparate ways that injury affects them. The reemployment benefit attempts to assist the laborer to learn to earn a living again because he, unlike the office worker, can't return to his job.

Workers with no ratable impairment are ineligible for retraining. This affects office workers, cannery workers, and others with repetitive stress injuries to their forearms, for instance.

Young Slope workers who are able to return to work at the fast foods job they held in high school are ineligible for the benefit. The wage disparity does not matter.

Workers whose job is described inaccurately with physical demands that are lower than the actual job are also found ineligible.

Instead of curing such problems with the present Act, Section 7 (r) of HB 419 seeks to further restrict access to retraining for injured workers. It "allows" workers to forfeit their reemployment benefits before they know whether they will need them and before they know how much they are worth to them. Once they have signed on the dotted line, they can not retract their waiver if they find they are unable to return to work or continue to work because of their injuries.

With no legal advice or explanation from anyone other than their claims adjusters, **workers who don't typically read what they sign, who can't speak English, who are functionally illiterate, or who are on pain pills will sign these affidavits "as a matter of course" -- a paper sandwiched among others.**

At present, workers can already waive their benefit, but only after they reach medical stability, after they understand that the value of the benefit they are forfeiting, and after they have legal advice or advice from the workers' compensation board to assure they understand exactly what they are waiving. Unless they have signed a compromise and release, they can also retract their waiver if they find their new physical limitations prevent their ability to work. Under the present act, the reemployment benefit for uncooperative workers can easily be controverted. **No law changes need occur to make sure the reemployment benefit is voluntary. The mechanism for waiving the benefit is already in place without the passage of Section 7 (r).**

Section 7 (r) invites numerous negative consequences:

- The waiver's irrevocability will encourage numerous legal challenges. Like the Miranda warning has done, this waiver will tie up the legal system for years to come. That litigation will cost the State of Alaska money.

- Workers with no way to earn a living will lose their homes, their savings, and their buying power. That will hurt, not help Alaskan businesses.

- Section 7 (r) of this law is a veiled attempt by the insurance industry to get the State to supplement the benefits for which they collect premiums. Injured workers not adequately served by the comp system will be forced to obtain financial support for themselves and retraining from Public Assistance and DVR. That will cost the State of Alaska money.

- As time passes and their resources decrease, injured workers who are able, will accept inappropriate employment and put themselves, their co-workers, and their next employer at risk. All of us will suffer.

- If workers waive the benefit and their waiver is irrevocable, then subsequently find that they can not work, they may be eligible to be declared permanently and totally disabled. Employers will pay for a lifetime of benefits that could have been over in two years.

Therefore, I urge you to **remove Section 7 (r) from HB 419** to protect the people of Alaska and the State budget. One life is a precious thing to waste.

Let's do the math with a fictitious worker who is assumed to have a 5% permanent partial impairment rating at the time of the institution of the re-employment plan (10% is considered high for most in our system), a $500/week comp rate, and a 2 year, $13,300 rehab plan. Under this scenario, the worker will receive the following:

BENEFIT	TOTAL AMOUNT	Weekly Benefit
PPI (5 X $1770)[1]	$8,850	$500 for 17.7 weeks
.041 (k) [2]	**$37,935**	**Approx. $450 for 84.3 weeks**
Tuition, books, and supplies	**$13,300**	**For a program of up to two years in length**
TOTAL WAIVED	$51,235	

If the worker waives rehab, the PPI (permanent injury payout) increase of $2100 ($420 per percentage point) for the injured worker in PPI benefits under HB 419 is counterbalanced by a loss of $51,235 in benefits. This represents the cost of the employee's support during retraining, as well as the expense of tuition, books, and supplies. The injured worker will be left with $8850 in his pocket, if he has a 5% impairment award. If he can return to work, he can earn money and still keep this $8850. If he can't, and he has waived the reemployment benefit, his vocational life will be forfeited for $8850!

[1] Every point will be worth $1770 if this legislation passes. Under the 1988 Act presently in effect, each percentage point for impairment of the whole person is $1350. The new Act changes that to $1770 per percentage point. Most ratings are under 10%. Examples: a cartilage tear in the knee = 4% WP, operated herniated disc = 10%, unoperated herniated disc = 7%, neck fusion = 10%.

[2] This is the so-called "rehabilitation stipend" that supports the worker during the program while he is being retrained and after his permanent impairment award has been doled out to him at his compensation rate.

DISABILITY LAW CENTER OF ALASKA

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Facsimile Cover Sheet

To: Rep. Norman Rokeberg
Company: Alaska House of Representatives
Phone: (907) 465-4968
Fax: (907) 465-2040

From: Janel L. Wright
Company: Disability Law Center of Alaska
Phone: (907) 565-1002
Fax: (907) 565-1000

Date: 3/20/00
Pages including this cover page: 2

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Comments:

CS HB 298

MEMBER OF THE NATIONAL ASSOCIATION OF PROTECTION & ADVOCACY SYSTEMS

Janel L. Wright
2945 Emory Street
Anchorage, AK 99508

March 20, 2000

Representative Norman Rokeberg

VIA FACSIMILE: (907) 465-2040

Dear Representative Rokeberg:

As an Alaskan with diabetes, I request that you withdraw your amendment to CS HB 298 for the following reasons:

- Adequate patient education is the cornerstone of good self-management and blood sugar control.
- It is impossible to estimate the number of hours a patient will need with a professional diabetes educator and dietician.
- The number of hours each individual should spend with a diabetes educator and dietician varies greatly, and is dependent upon the individuals needs.
- In limiting the hours of reimbursable patient education, those individuals with the greatest need for education are denied access.
- The advancements in treatment of diabetes that lead to healthier more productive lives for individuals with diabetes require access to education.
- Patient education is necessary to enable persons with diabetes to avoid complications of the disease.
- Patient education is far less expensive than the costs related to diabetes complications such as kidney failure, heart disease, blindness, nerve damage, and amputations.

Representative Rokeberg, thank you for considering my request that you withdraw your amendment to this important legislation. I look forward to your response.

Very truly yours,

Janel L. Wright

Janel L. Wright

Post-it® Fax Note 7671	Date 3/20/00	# of pages ▶ 2
To Norman Rokeberg	From Betty A Cross	
Co./Dept.	Co. Crawford & Co	
Phone #	Phone # 907-561-5222	
Fax # 907-465-2040	Fax # 907-561-7383	

March 20, 2000

Crawford®
Betty A. Cross
Manager

Representative Norman Rokeberg
State Capitol, Room 24
Juneau, AK 99801-1182

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MAR 20 2000

RE: House Bill # 419 (L&C)

Dear Mr. Rokeberg:

I am a rehabilitation professional who is certified to provide vocational rehabilitation services at the request of the Department of Labor, Workers' Compensation Division, for injured workers in Alaska. I have also provided rehabilitation services to injured workers in Montana, Idaho, Washington, and Oregon, as well as other states. I have been practicing as a professional rehabilitation counselor since 1984.

I am very glad to see some of the proposed changes to the workers' compensation bill that provide increased benefits to injured workers in Alaska. This includes raising the allowed cost of re-training to $13,300 from the current $10,000. I feel that this is extremely important due to the rising cost of education, supplies, books, tools, and equipment.

I am concerned about a new section being added, Section 7 AS 23.30.041 (r), which allows an employee to "waive, at any time, any benefits under this section, including an eligibility evaluation and benefits related to a reemployment plan." I feel that injured workers may potentially be pressured by insurers to waive their benefits prior to a clear determination as to whether they may return to the time of injury job or other jobs in their previous 10 year work history. I believe that an injured worker should not be allowed to "waive" reemployment benefits unless they have completed a thorough "eligibility evaluation" to determine their return to work potential.

I have seen other states, such as Montana, "settle out" rehabilitation benefits by using a similar waiver. Later the Supreme Court came back and stated that it was "inappropriate" to settle out rehabilitation benefits and injured workers had to actually be provided the services. This legislation re-opened hundreds of previously settled cases thus incurring double the cost for rehabilitation. It became a settlement first and then rehabilitation services provided several years later.

Even if the state Alaska can prevent a similar occurrence as noted above, I believe the cost of rehabilitation will show up in other places. Those individuals who waive rehabilitation may show up applying for services through the State Department of Vocational Rehabilitation for retraining services and thus will increase the burden to the State of Alaska in this department. Some individuals who cannot return to their usual occupation may need to apply for Public Assistance, unemployment, or may need to take out high interest loans to engage in re-training on their own.

In summary, I would like to see the above noted section deleted or amended to require an eligibility evaluation so that injured workers will know their return to work potential and if eligible for services, they understand what services they may be waiving.

Sincerely,

Betty A. Cross

Betty A. Cross, CRC, CDMS

Alaska Injured Workers Alliance
P. O. Box 101093
Anchorage, Alaska 99510
907-278-3661 Of. 688-7708 Hm 229-5718 cell 688-7709 fax

March 20, 2000

Dear Labor & Commerce Committee Members,

I would like to speak to you today about House Bill 419. This bill is not in the best interest of workers. It is the same committee that formulated the 1988 changes that has devastated injured workers and their families. We now know conclusively by the Legislative Budget and Audit Report that just came out intentionally or not injured workers have and are being disadvantaged by the workers compensation system. Many workers have waited for medical care and been denied benefit while knowing that fee caps on workers attorneys did little or nothing to help them secure information regarding their rights and benefits. The worker has little or no help provided by the Division of Workers Compensation. We are now asking for your assistance to make this a more fair and just system.

We know that recent budget cuts have not helped this situation but complicated it yet even more. I hope that you will carefully review the Legislative Budget and Audit Report and see that changes can be implemented on the recommendation of the Audit team. We need to improve services, provide better enforcement of the current law, and straighten out penalty issues. IF insurance companies regularly under report on the verified annual data and the division is not enforcing the penalties we could have more revenue to assist in securing better services. Defense attorneys are given more preferential treatment than to injured workers and their attorneys, the audit confirms this. We need to make this system fairer for all parties.

The average worker earning 155.00 per week makes below poverty wages, with no inflationary increases. With the rate proposals in the HB 419 it is not even keep pace with inflation in today's real money terms. None of the increases are based on today's real money terms and do not account for inflation. Why should we further complicate an already complicated matter? Why not use the L & B recommendations to first make the process more fairer to all parties then make constructive changes that reflect more real terms for workers. We need to move them past social services and delayed medical treatments and to enforcement even handed fairness to all parties.

Lastly we need better education programs geared for workers 28,000 claims per year and 10 Workers compensation Attorneys are not enough to cover the whole state. Better wages for worker attorneys would mean more attorneys. Fee caps for defense attorneys are essential. Education programs and technical assistance are only provided by The Alaska Injured Workers Alliance at this time. Workers need better access to information to make informed decisions about their rights and benefits. The Further away from Anchorage they are the less access to information workers have. We are not against anyone, but this system that was designed for workers long ago needs impute from the very disadvantaged workers. Not just a bunch of people who are supposed to represent our interest. With three quarters of the majority against workers from the start workers are looking to you to insure better benefits and safer working conditions in which to work. I hope that you will be sensitive to their needs and not just the people have control of their benefits.
Thank you for your time concerning this matter.

Sincerely,
Barbara Williams
Alaska Injured Workers Alliance

ALASKA INJURED WORKERS' ALLIANCE

Once again there is a bill relating to workers' compensation crafted by the Governor's Ad Hoc Committee on Workers' Compensation. Despite years of public testimony from injured workers that the Ad Hoc committee does not represent them, the Governor again excluded injured workers by appointing only industry and union agents to the committee. The following is a sectional analysis of this bill from the perspective of injured workers.

Section 1. INTENT

(a) This is the same intent of the legislature as stated in 1988. For anything more than a cut finger there is nothing quick, efficient, or fair with regard to injured workers. What is predictable is the non-delivery of indemnity and medical benefits to injured workers and the resultant cost savings to insurers who do not pass savings along to employers.

(b) The legislature again declares that the workers' compensation act must not be construed in favor of any party. This continues to undermine the presumption of compensability.

(c) A token increase in the state average weekly wage "more fairly compensate[s] injured workers" but does little to change the gross unfairness.

(d) The true intent of this subsection is to instate another procedural bar through which injured workers can be denied benefits. There is no objective evidence that paying injured workers reduced benefits does anything to encourage them to complete the rehabilitation process as quickly as possible and thus return to work in an expeditious manner. The division's annual reports show years of few to no injured workers retrained. Economic hardship is in realty just a further deterant in an under funded, unrealistic program promoted by the legislature to further the insurance industry's goal of reduced costs.

(e) It is disengenous for the legislature to cut the division's budget considering the division's gross deficiencies and then claim that it's enactments are to encourage quick, efficient resolution of any aspect of the act.

Section 2. AS 23.30.041(c)

(c) In the Alaska Workers' Compensation Act the word "notwithstanding" is a red flag warning injured workers that their rights have been removed. In this instance the legislature is removing an injured worker's right to a hearing wherein the board must decide whether a waiver is in the best interest of the employee. The legislature directs the board to prescribe or approve a form the employee would be using to shoot himself in the foot.

Section 3. AS 23.30.041(g),(h), and (i)

(g) The number of qualified rehabilitation specialists has been decreasing. Many refuse to work for certain insurance companies and/or adjusters. Adding five days to the time allowed for an injured worker to select a rehabilitation specialist, and then procedurally terminating his benefits for failure to perform within the meager time frame allowed, penalizes workers who are disadvantaged by their injuries and rewards insurers and adjusters for creating and maintaining a highly contentious enviroment for rehabilitation services.

(h)(2) Here the legislature adds the term "transferable skills" with out defining it or differentiating it from the other terms used in the same sentence. Since the rules of statutory construction require every word to have a specific meaning the question begs.

(h)(7) The date of "medical stability" has serious ramifications under the Act. "Predicting" it at all is medically questionable to begin with. Allowing non-treating physicians to promulgate guesses is even more so. Relying on the insurance company's physician's prediction to formulate a rehabilitation plan can result in a plan the injured worker refuses to cooperate in on the advice of his treating physician. Under AS 23.30.041(n) his benefits can thus be terminated by his insurer for following his doctor's advice.

(i) By adding a plan requirement for continuous participation by the employee, the legislature fails to recognize that the nature of an injured worker's injuries and resultant disabilities often prevent or otherwise interfear with an injured workers ability to continuously participate in a plan. Again AS 23.30.041(n) allows the insurers to terminate benefits. The legislature is giving the insurance industry tacit authority to violate the Americans with Disabilities Act. The legislature also added a requirement to "maximize the usage[s] of the employees' transferable skills." These presumably are the same transferable skills the legislature has failed to define despite AS 23.041(q) which provides definitions for terms used in this section.

Section 4. AS 23.30.041(k) & (i)

(k) Increasing the stipend compensation rate from 60 to 70 percent does little to alleviate the economic hardship that adversely effects an injured worker's ability to participate in a reemployment plan. Few people can sustain a 30 percent loss in wages and maintain their financial commitments to mortgage holders. Being both handicapped and homeless does not increase an injured worker's ability or incentive to participate in a reemployment plan. Suspending benefits until an employer or insurer recoups a prior lump sum permanent partial disability[sic] payment defeats the purpose of stipend payments. Referring to a permanent partial disability does not encourage confidence in the legislature when the legislature itself abolished permanent partial disability in 1988 when it side stepped the entire concept of disability in favor of the more expedient "impairment."

Permanent total disability is generally prescriptive under AS 23.30.180(a) and does not consider involvement in the rehabilitation process as conclusive evidence to the contrary. Furthermore temporary total disability ends on the date of medical stability under AS 23.30.185. Therefore an injured worker with permanent total disability who is medically stable would receive neither TTD nor PTD benefits while in the reemployment process. Permanent disability precludes wage loss benefits if involved in a reemployment plan but temporary disability does not.

(l) There is no objective evidence that raising the $10,000 cap on the cost of a reemployment plan to $13,300 bears any closer relationship to the actual costs of plans any more than the arbitrary two year plan completion limit established under (k).

Section 5. AS 23.30.041(n)

(n) This additional means of non-cooperation allows the employer to terminate benefits before they have even started on grounds the employee may have no control over. An employee's choice of rehabilitation specialist is dependent upon the specialist's availability, acceptance, and ability to establish a rapport with the employee.

Section 6. AS 23.30.095

(c) There is no rational basis for requiring a physician or healthcare provider to submit a report within 14 days of treatment yet allowing employers to delay payments for 30 or more days. Simply telling the employee and provider in writing of the reason for not timely making payment does not comply with the controversion notice requirements of AS 23.30.0155(a).

Section 7. AS 23.30.095 (f)

(f) What is an "updated" usual, customary and reasonable medical fee schedule? Is a new fee survey conducted each year? What are the parameters of the survey? Does the schedule determine usual, customary, and reasonable fees or usual customary and reasonable care? Considering the legislative budget cutting, what is the fiscal cost and how will it affect service levels? All of these issues have been blurred by the administrative process recently used to adopt Medicode.

Section 8. AS 23.30.105(a)

The addition of AS 23.30.41 to this subsection should be in numerical order. While amending this section the last sentence should be amended to include compensable disability and/or impairment. Permanent partial impairment has been compensable under AS 23.30.190 since the legislature adopted it in 1988.

Section 9. AS 23.30.107(a)

(a)(i)(A) Should this be (a)(1)(A)? The request must include not only notice of the employee's right to petition for a protective order but also state that the petition must be filed within 14 days as now prescribed by this new statute. It should also state that three additional days must be added under 8 AAC 45.060 since the request was served by mail.

(B) AS 23.30.005(f) states, "Two members of a panel constitutes a quorum for hearing claims...." AS 23.30 makes no distinction between a claim or petition. Prehearing officers are not required to be licensed to practice law under the Administration Procedures Act. They do not constitute a quorum. They should not be given authority to "resolve disputes concerning releases of information." They would be determining the relevance of evidence. There is no greater issue in a claim than the evidence on which all other issues will be decided. The employee's constitutional right to privacy must be carefully weighed. Ex parte communication is the norm for prehearing officers. Prehearing officers issuing orders in the name of the board is a gross violation of due process guaranteed by both the state and federal constitutions. Stating that the employee's rights to benefits under the act shall be suspended makes suspension mandatory and potentially creates a penalty disproportionate to any prejudice or harm to the employer.

(C) No attempt is made in this legislation to establish any criteria for determining that good cause existed for the refusal to provide authority to obtain medical records. Did every employee waive their rights to due process and privacy the day they went to work?

(ii) Should this be (a)(2)? A prehearing officer issuing decisions and orders is an abuse of discretion in that they have no discretionary authority in the first place. It is a violation of due process to permit the board to "review" a prehearing officer's determination and uphold it without holding a hearing. Prehearings are not statutory requirements unless a party opposes a hearing request. Excluding evidence or arguments by statute from being presented at a hearing because is was not presented at a prehearing created by a regulation eliminates any distinction between legislative, administrative, and adjudicative law. Prehearing officers now have more authority than the legislature and the board combined.

Nothing in these proposed statutes stays the employer from suspending benefits when a petition for a protective order is filed. By requesting an employee to provide written authority to the employer to obtain medical records that is so overboard as to be offensive on its face the employer sets in motion a process that allows the employer to suspend benefits for months with impunity. What is an appropriate sanction for the employer's violation of the employee's constitutional rights?

Section 10. AS 23.30.110(c)

(c) The language added to this subsection is so ambiguous it looses all meaning. Filing a prehearing request suspends the time for filing a hearing request? In granting a last hour continuance the board should be considering issues of due process and manifest injustice to insure that the procedural requirements are not infringing on constitutional rights. The legislature should not be introducing confusing procedural bars to an employee's supposedly guaranteed benefits.

Section 11. A New Subsection (p) to AS 23.30.155

(p) It is hard to calculate interest when the statutes and regulations do not clearly establish when all of the various compensation and benefits are due. Who calculates the interest and who verifies it correctness?

Section 11. AS 23.30.175 (A second Section 11.?)

(a)(i) Should this be (a)(1)? The purpose of $110.00 and $154.00 per week thresholds used to determine an employee's weekly rate of compensation were never well reasoned. The insurance industry no longer needs this buffer. No objective evidence has been provided to substanciate any percentages. How does the Division of Employment Security calculate the Alaskan average annual wage. Fixing wage rates to the date of injury does not fairly compensate those employees who develop latent disability or impairment many years later. Radiation exposure at the age of 20 may cause no initial disability yet at 40 could be fatal. In twenty years the employee's wage rate may have tripled.

Section 12. AS 23.30.190(a)

(a) The $135,000.00 whole person valuation established in 1988 was never based on any objective evidence. It's only rationalization was that by cheapening human value insurance companies could substancially cut losses. Raising the valuation to $177,000.00 does not account for inflation since 1988 so the legislature is even further devaluing human existence. If the legislature is going to calculate the maximum compensation rate under their amendment to AS 23.30.175(a)(i)[sic] as a percentage of the Alaska average annual wage, why not set the whole person valuation at 500% of the same thing. Better yet, first determine the whole person impairment percentage for the loss of an arm in personal injury litigation cases, second determine the whole person impairment percentage fpr the loss of an arm, and third divide the personal injury valuation by the percentage of impairment to determine the whole person valuation. Take this valuation and divide it by the average annual wage to determine the percentage multiplier for future years. Of course it is much easier to simply ask the WCCA what they are willing to pay.

Section 13. AS 23.30.215(a)(1) and (2)

(a)(1) Was the $2,500 funeral expense increased by 32% just to compensate for inflation or were present funeral costs actually reviewed to determine a realistic expense?

(a)(2) It pays to die. The insurance companies forgot to subtract off the salvage value of a dead body.

(b) This section was not changed to be consistent with changes being made to AS 23.30.175.

Section 14. AS 23.30.220(a)(4)

(a) Will overtime and premium pay be included at its full value or will only the hours be included at straight pay?

(b) The word "the"[sic] should be the word "then." Otherwise same as (a) above.

General Comments:

This Ad Hoc Committee compromise bill once again proports to be a balanced trade off between industry and labor. On the surface it appears to increase benefits for injured workers but in reality few will ever see these benefit gains. The procedural bars that have been introduced or strengthened will insure that fewer injured workers ever receive benefits in the first place. The brass ring on the merry-go-round can be changed to gold but the ride has been set up to insure that no one can reach it without falling off. You have paid for this ride with your constitutional rights. When the music stops, where will you be?

The Alaska Injured Workers Alliance
P. O. Box 101093
Anchorage, Alaska 99510
K. Scott Mc Entire President
907-337-8614

March 20, 2000

My name is Jerry Flock. I am an injured worker with an uninsured employer. You may have heard of my employer General Roofing. My employer paid 100.00 and a 38-caliber handgun to relieve them of the liability. Through this whole process the Alaska Workers' Compensation Board has done nothing to protect my rights or me. The only source of information that I have had is The Alaska Injured Workers Alliance. By passing House Bill 419 you are enforcing the fact that the division regularly works with employers and insurance companies as the Legislative Audit confirms to me.

I have had surgery that cost Public Assistance and not my employer. They have disposed of their responsibilities regularly and not only do I have to fear for my own safety but my families as well. You cannot possibly tell me that the DWC is doing all it can to fierily access workers rights to medical care and benefits I am a prime example of how this can all go wrong. I urge you to follow the recommendations and clean up the workers compensation system and make it fair for all party's not just employers and insurance companies. My employer had let her policy lapse 16 times and one other employee broke his back while falling off a roof since my employer knew no one would enforce the laws to protect me and those like me. Proper enforcement is necessary to see that workers are protected. Two years ago when the Injured Workers Alliance started inquiring an alarming 60% over half of the state employers were uninsured. This must change. We also need better education programs and access to legal assistance to process our claims.

I urge you to see fit to protect all workers in this state and see that everyone is treated fairly and not denied due process. Due process escapes me to this day because no one will see that my employer pays my benefits and secures my medical care and possible retraining. I hope that you will remember me and be an active part of proper enforcement of these laws and new ones I the future.

Thank you for your time
Sincerely,
Jerry Flock
929-3599

March 20, 2000

Dear Committee Members,

My name is Valerie. I have a brain injury. I recently had a surgery on my spine that relieved me of my headaches. I was unable to focus and was to the point of suicide. Please consider the Legislative Budget and Audit Recommendations before making the workers compensation laws any worse. If it had not been for The Alaska Injured Workers Alliance, I would not have legal council or had my surgery. They provide necessary services for people like me with cognitive disorders. We need a system that is fair to everyone not just insurance companies.

I hope that you will think of me and others like me when considering your decisions. Without information we cannot help ourselves and support our families. I have a twelve-year-old daughter who depends on me. I have to have my benefits to support my child and myself. I hope that you will see that this process is fair for everyone. We need better education programs, technical assistance, and access to legal help. With out help people with brain injuries like me don't and won't receive benefits. Thank you for your time.

Sincerely,
Valerie Welsh
332-5994

March 20, 2000

Dear Committee Members,

I am here to speak to you today concerning HB 419. As an injured worker in the Workers Compensation system for almost ten years I know how complicated it really is. We are asking you to review the Legislative Budget and Audit review on Workers Compensation and make better changes not the ones in this bill. They are insulting us by not even adding inflation in the weekly wages for workers. We need to support our selves and our families. My insurer and employer delayed my medical care and I had to have a total knee replacement due to untimely medical treatment. I have to go before the Workers Compensation Board tomorrow and beg that the rest of my injuries that happened all on 8/21/92 be covered. I have never had any problems with my back or other body parts until I was injured on the job. The whole process has been a nightmare for my family and me and resulted in a physcological disability for me.

Better education programs are necessary for workers to be informed as to their rights and benefits. The Audit confirms that we are being disadvantaged. Please help us. Make the process fair for all parties not just the insurance companies and employers who are in control of our care.

We need your support in seeing that we are treated humanely and not mistreated as many of us are. We need you to protect us and not just listen to people who represent our interest. Those same interest would further reduce our benefits and tip the control of our health and welfare in favor of the insurance companies. We urge you to act fairly and evaluate the mess that is already in full swing. Make the process understandable and fairer. Increase our attorney fees to that more of us have access to legal help. Thank you for your time and attention to this most important matter.

Sincerely

Bruce W. Williams
P. O. Box 771754
Eagle River, Alaska 99577
907-688-7708

FROM : Law Office of Michael J Jensen FAX NO. : 907 522 8173 Mar. 07 2000 09:25AM P1

Alaska W/C Alliance
Glenn Aubrey

Law Offices of
Michael J. Jensen

12350 Industry Way, Suite 208
Anchorage, Alaska 99515

Tel (907) 277-6000
Fax (907) 522-8173

February ..., 2000

Viz Facsimile
269-7461

The Honorable Tony Knowles
Governor for the State of Alaska
550 W. Seventh Ave., Ste. 1700
Anchorage AK 99501

Dear Governor Knowles:

You recently submitted a proposed amendment to the Alaska Workers' Compensation Act which you believe will adjust the Act, after 12 years without an adjustment for inflation. You are quoted as stating:

> I don't think there are too many benefits programs in any aspect of government that go 12 years without an adjustment.

Anchorage Daily News, Section D-4, February 12, 2000.

I have practiced before the Alaska Workers' Compensation Board for over 15 years. I represent exclusively injured workers. I had the pleasure of first being introduced to you 15 years ago. I had been a supporter of yours ever since, even having walked the Fairview and Mountain View neighborhoods on numerous weekends in your 1994 campaign for Governor.

From your statement it is clear to me that you are unaware of the further erosion this Act will cause in the benefits of Alaska's injured workers. Since 1988 not only have workers' benefits not increased they have in fact been greatly reduced. A perfect example is the 1997 amendment to the Act which changed to a more restrictive version of the AMA Guides for the rating of permanent impairment. This has dramatically reduced the amount of permanent benefits which workers with permanent impairments receive. Another is the Supreme Court's decisions affirming the most draconian interpretation of the rehabilitation sections of the Act. The one Supreme Court case, Meek v. Unocal Corp., 914 P.2d 1276 (Alaska, 1996), which benefited workers by addressing a major oversight of the 1988 Act this legislation seeks to repeal.

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Ak W/C Alliance
DH

This proposed legislation will only further reduce the limited compensation benefits workers receive. It is true that some benefits will increase but the ad hoc committee's concessions to its management members will take away several very important benefits that workers still enjoy. The effect will be that it will reduce or eliminate the benefits they receive in the most severe cases requiring vocational rehabilitation.

The proposed legislation will take away the current protection afforded by Board oversight. These regulations authorize waivers of vocational rehabilitation only if determined to be in the employee's best interests. 8 AAC 45.160(e). This legislation takes this protection away.

This proposed legislation would do away with most of the hard fought privacy protection gained by groups such as the Alaska Injured Workers' Alliance. The Alaska Workers' Compensation Board has sought to protect this important right. Recent decisions are reigning in the abuse by a few adjusters or lawyers seeking release of medical and other personal information. The Board has done this while at the same time acknowledging the employer's need for relevant records pertaining to its worker's injury. This legislation reverses this delicate balance and takes away the progress made by workers. It returns the system to the abuses of the past.

This proposed legislation does away with benefits for the most disabled when they have reached medical stability and before they can obtain an impairment rating. Often the costs of these ratings must be initially borne by the worker which prevents the worker from obtaining a rating. This legislation would repeal the Meek decision which remedied this oversight in the 1988 Act.

This proposed legislation would not assure that workers' overtime, paid as part of their work, is considered in the calculation of compensation. It does not change the current practice of only considering overtime pay at the straight time rate. This is particularly onerous for Alaska injured workers who made a substantial part of their income from overtime.

There are other significant shortcomings in this legislation which take away from your stated intent of increasing workers' compensation benefits after twelve years without an adjustment. I strongly urge that you reconsider the legislation you have proposed. After twelve (12) years of living with the present Act, workers deserve benefits which allow them to "get back on their feet." They do not deserve to have these limited benefits cut any further.

Thank you for your attention.

FROM : Law Office of Michael J Jensen FAX NO. : 907 522 8173 Mar. 07 2000 09:26AM P3

Ok W/C Clearance
DA

Sincerely,

Michael J. Jensen

MJJ/wws

cc: Paul Grossi, Director, Alaska Workers' Compensation Division
Alaska Injured Workers' Alliance

Alaska W/C Alliance - [illegible]

FINDINGS AND RECOMMENDATIONS

1) The Division of Workers' Compensation management should develop a strategic plan to better accomplish the agency's operating mission. Manual processing of much of the paperwork related to claims and payments is inefficient.

   Strategic plan would have to reflect a commitment to real and relevant performance goals.

2) The Division of Workers' Compensation should propose legislative changes to improve in the workers' compensation laws.

   1.) Fixed benefit amounts have not kept pace with the inflation and the cost of living.
   2.) Overtime and premium pay is excluded in the determination of spend able weekly wage.
   3.) Interim compensation is allowed under limited circumstances.

3). The Division of Workers' Compensation Director should increase ***outreach, education and technical assistance to injured workers with regard to their rights and responsibilities under the workers' compensation laws when a disputed claim occurs.***

4.) The Division of Workers compensation Director should take proactive measures to identify and monitor uninsured employers.

   1.) Eliminate the backlog that contributes to significant inefficiencies.
   2.) Fully resolve injuries reported as uninsured and corrected system data to promote accurate uninsured injury statistics.
   3.) Delevelope amendments to AS 23.30.085 for legislative consideration that institutes penalties for filing insurance/adjuster notices in a timely manner.

4.) Documents the entirety of employer enforcement correspondence and effort.

5.) Sought revisions to the Alaska business license

6.) The legislature should consider amending 23.30.075 to empower the Alaska Compensation Board to sanction uninsured employers.

6.) The Department of Commerce and Economic Development's Director of the Division of Insurance should implement policies and procedures that ensure timely enforcement of insurer compliance of the Workers' Compensation Act.

7.) The Division of Workers' Compensation should improve overview of insurers' annual reports.

8.) The Division of Workers' Compensation should adopt a methodology for accessing compensation report penalties that is consistent with statue.

9.) The director of Workers' compensation should correct inappropriate administrative and accounting practices.

10.) The director of Workers' Compensation should resolve the legality of "supplemental" benefits and rectify internal control weaknesses over such expenditures.

1.) Obtain the attorney generals opinion when accessing the legality of issuing supplemental benefits under AS 23.30.172 to individuals who no longer receive primary workers compensation benefits from their insurer.

2.) Exercise a greater level of monitoring over the expenditure of supplemental benefits.

3.) Adequately support benefit calculations based on workers wages.

11.) The Division of Workers' Compensations' reemployment benefits administrator should capture indelibility determination statistics for policymakers and stakeholders.

12.) The Division of Workers' Compensations' director should seek legal clarification with regard to the methodology for accessing annual penalties.

Subject: HB419
Date: Tue, 14 Mar 2000 12:35:57 -0800
From: "Bob Sullivan" <rsullivan@gci.net>
To: <Representative_Norman_Rokeberg@legis.state.ak.us>

From: Robert M. Sullivan
6635 Desiree Loop
Anchorage, AK 99507
Tel.#: (907) 344-7588
Fax#: (907) 349-8721
E-mail: rsullivan@gci.net

There are two major problems that I see with HB419, AS 23.30.041, Sec. 7, (r):
1. This section opens the door for insurance companies and employers to apply pressure to injured workers and employees to waive their rehabilitation benefit before they have a clear idea of whether or not they will need it.
2. The waiver, once signed and transmitted, is irrevocable, which eliminates a means for injured workers, who have waived their benefit, to seek reinstatement of the benefit, if it is found that they need it at a later date.

Should Sec. 7, (r) remain in this bill, and be passed by the legislature, I see several impacts that early irrevocable waivers of vocational rehabilitation benefits may have on injured workers, employees, and the community:
1. Injured workers who cannot return to their usual employment will be subject to returning to work in unskilled, low paying jobs; returning to their usual employment in a hurt condition; seeking other state and federal resources for support; or seeking additional medical services through the workers' compensation system in an effort to fix a medical problem that may not be entirely fixable.
2. Employers may decide to use the waiver of rehabilitation benefits form as a condition for employment.
3. Federal taxes and the state budget that support other rehabilitation programs will be used to take care of the disabled workers that should be the responsibility of the workers' compensation system, employers, and the insurance industry, and thus, stretching the resources of these alternative programs.
4. Productive tax paying citizens will be replaced by victims seeking assistance, which will erode the tax base, and increase the need for the general public to pick up the slack.
5. All of the above-mentioned problems will undoubtedly lead to increased litigation, because there will be many people who will take legal action to rectify their situation.

I hope there is something you can do to delete Sec. 7 (r) from this legislation.

Subject: HB419
Date: Thu, 9 Mar 2000 12:20:39 -0900
From: "Jim Sykes--AKPIRG" <akpirg@akpirg.org>
To: <Senator_Drue_Pearce@legis.state.ak.us>, <Representative_Brian_Porter@legis.state.ak.us>

DT: March 9, 2000

<?xml:namespace prefix = o ns = "urn:schemas-microsoft-com:office:office" />

FR: Barbara Williams, Vice President

Alaska Injured Workers Alliance

Membershipmore than 500 injured workers

PO Box 101093, Anchorage, AK 99510

PH: 278-3661 FAX 278-9300 email: akpirg@akpirg.org

RE: HB419

After yesterdays discussion on HB 419 in the House Labor and Commerce Committee I am writing to urge you to review the Legislative Budget & Audit on Alaska Workers' Compensation. This piece of information is very critical to your understanding of why it is not in the best interest of workers for you to support this bill.

The audit points out that workers are disadvantaged by the current system and provided important recommendations as to a more fair and efficient delivery of benefits. The WCCA is specifically discussed on pages 11-16. This organization led the changes for the legislation that have penalized and harmed workers for the past 12 years. It is only through labor unions that WCCA can claim to represent injured workers, which is a small minority compared to the number of injured who do not belong to labor organizations. Roughly three-fourths of injured workers have no voice.

Change is driven by interest in pocketbooks rather than workers' interests. The audits present clear evidence confirming workers comp laws have not been meaningfully enforced. For example on page 43, " DWC's director should propose legislative changes to improve the balance in the workers' compensation laws." The succeeding page states that the director should increase outreach, education, and technical assistance to injured workers with regard to their rights and responsibilities under the workers' compensation laws when a disputed claim occurs. Proactive measures should be taken to identify and monitor uninsured employers. The DWC director should improve controls over the review of insurers' annual reports and should correct inappropriate Administrative and Accounting practices.

There needs to be adequate support for benefit calculations based upon worker's wages.

"Such circumstances, that we believe are unintended by-product of the 1988 amendments, ***have resulted in a situation where more consideration is provided to employers and employers than to injured workers***." The proposed legislation comes from the same group that brought amendments in 1988 which have proven detrimental to Alaska workers. That is why the audit is so important to understand before additional changes are made.

The need to educate workers is vital. Although most workers have no idea how to process their claims there are 28,000 claims per year. This is further complicated by a shortage of legal assistance to this disadvantaged group of individuals. The further away from Anchorage, Fairbanks, and Juneau the workers are the less information and legal assistance they have available to them. The insurance companies enjoy having an open wallet while fee caps restrict workers attorneys.

The recommendation section of this report alone raises a red flag and clearly indicates that the playingfield that legislators have intended to be fair has been administered unfairly. Workers, for whom this indemnity has been designed, have been disadvantaged by the administration. The lack of fair enforcement violates due process for injured workers.

Critical information that needs to go to injured workers appears to be bottled up in cooperation between the Division of Workers Compensation, Insurance companies and the WCCA. The net effect is that injured workers do not receive quick efficient, fair delivery of indemnity and medical benefits. There is no one in the process exclusively representing injured workers and their health care providers. The reason hundreds of people have contacted the Alaska Public Interest Research Group and the Alaska Injured Workers Alliance is because they are the only free source of information helping some of the 75% of injured workers and health care providers that are not represented by unions.

The scales of balance are tipped heavily against injured workers and we have a responsibility to correct that. I hope that we can count on your support for the recommendations from Legislative Budget Audit team. The information is accurate, reliable and gained from a thorough investigation. Since these changes will dramatically affect the lives of one of eight Alaska workers, they need to be done fairly with full consideration for available evidence. To view a full copy of the audit you may link to http://legis.state.ak.us/legaud/web/pages/00audlis.htm . Thank you.

Sincerely,

Barbara Williams, Vice-President

Alaska Injured Workers Alliance

ALASKA WORKERS' COMPENSATION BOARD

P.O. Box 25512
Juneau, Alaska 99802-5512

CURTIS L. NACCARATO, Employee, Applicant, v. NACCARATO CONSTRUCTION, Employer, and STATE FARM INSURANCE CO., Insurer, Defendants.	DECISION AND ORDER AWCB CASE No. 9513413 AWCB Decision No. 97-0074 Filed with AWCB Anchorage March 26, 1997

We heard the employee's claim for compensation on February 25, 1997 in Anchorage Alaska. The employee was present telephonically and was represented by his sister Lori Naccarato, who also attended telephonically. The employer was represented by attorney Richard Wagg. We closed the record at the hearing's conclusion.

ISSUE

Whether the employee's July 4, 1995 injury was proximately caused by his intoxication.

SUMMARY OF THE EVIDENCE

On July 4, 1995, the employee was doing construction work in King Salmon, Alaska, on a roof, when he fell, injuring his left elbow and right-lower leg. The employee testified both at the February 25, 1997 hearing and in his deposition that he began work at 8:30 a.m. He was working with his brother, Lee, who was also his employer. At approximately 11:30 they went to lunch, where the employee drank one beer and ingested one benedryl. At approximately 5:30, Lee left the job site. The employee testified he was on the roof at the time, working alone. At approximately 6:30 p.m. the employee fell off the roof. People were in the area, and there was a Fourth of July barbecue celebration across the street. The employee testified that someone from that celebration called the ambulance very soon after he fell. The dispatch report reflects a call made at 8:10 p.m.

Mary Swain, an emergency medical technician (EMT), testified in a deposition. She arrived at the accident scene some time between 8:15 and 8:20. (Alaska Pre-Hospital Patient Report). She stated that the employee's injury was the first call she responded to as an EMT; therefore, she remembers it very clearly. Swain testified that the employee's breath smelled heavily of alcohol. (Swain depo. at 12). After the emergency crew placed him on a backboard, they transported the employee by ambulance to the clinic. In the ambulance, the employee admitted to having "whiskey earlier that afternoon, and he had smoked some weed." (Swain depo. at 10). Swain recounted that she saw no evidence of head trauma.

Cary Brown, another EMT who provided emergency care to the employee at the scene of the accident, testified in a deposition. Brown described the employee's appearance as follows: "He had red, watery eyes. His cheeks were red, and his vision -- I mean, his speech was -- slurred. And admittedly, though, that could have been caused -- some of that could have been caused by his injury, but the smell [of

alcohol], of course, is not something that would have been caused by the injury." (Brown depo. at 13). Brown noted in his report: "smoked weed, alcohol involved." (Exhibit 1 to Brown depo., Alaska Pre-Hospital Patient Report). Brown stated there was no evidence of a head injury.

Leon Koenck, P.A.C., the physician's assistant on duty at the clinic on July 4, 1995 also testified in a deposition. The dispatch report reflects that the employee arrived at the clinic at 10:41 p.m. Koenck recounted: "Impression was that he was quite inebriated, quite intoxicated, by the amount of yelling and screaming, and then admission. When asked if he had been consuming alcohol, there was admission make during our initial evaluation and exam." (Koenck depo. at 7). Koenck stated that because of the employee's alcohol consumption, he reduced the amount of morphine. (Id. at 13). Koenck further stated that given the amount of alcohol consumed by the employee, his motor coordination would have been impaired. (Id. at 15). Koenck saw no evidence of a head injury.

Loren Weaver, M.D., also testified via deposition. Dr. Weaver was the physician on staff at the clinic, when the employee arrived. Dr. Weaver stated that the employee was intoxicated when he examined the employee. (Weaver depo. at 19). He stated he noted slurred speech. (Weaver depo. at 15). Dr. Weaver further stated that the employee told him he had drunk five glasses of whiskey. (Weaver depo. at 17). Dr. Weaver wrote the following in his July 4, 1997 report: "37 year-old male, drank, '5 glasses whiskey' then started working on roof where he fell off injuring right ankle - left elbow no head or neck injury No SOB or chest or abd injury".

After the employee received treatment at the local clinic, he was transported to Anchorage. Richard McEvoy, M.D., treated the employee at Alaska Regional Hospital. Dr. McEvoy wrote the following in his July 5, 1995 report regarding the employee: "He says he has been straight for two years. He normally does not drink much, but he has been drinking fairly heavily the last two weeks. He smokes two packs of cigarettes a day. He uses occasional marijuana."

Lee Naccarato testified at the hearing. He stated that on July 4, 1995 he began work with the employee at approximately 8:30 a.m. At 11:30 a.m. they went to lunch, where the employee ordered one beer. At 5:30 p.m., Lee left the employee alone at the work site. He had asked the employee to finish preparing the roof to be urethaned, which should take the employee approximately one to one and a half hours to complete. Lee testified that when he inspected the site the next day, he noticed the job was complete. Lee also testified that the ground where the employee fell was strewn with old alcohol bottles and cans, and that the ground was saturated with alcohol.

Michael Propst, M.D., the chief medical examiner for the state of Alaska, testified at the hearing. He stated that judgment is the first effect of alcohol impairment, followed by motor coordination. He stated the average male reaches a 15% blood alcohol level after approximately 6 drinks. At that point both fine and gross motor coordination are significantly impaired.

The employer argues the employee was intoxicated at the time of injury, and that intoxication was a proximate cause of the work-related injury. The employee argues that he was not intoxicated at the time of injury, but rather suffered head trauma. He further argues that laying on the alcohol-saturated ground is what caused him to smell like alcohol.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

AS 23.30.120 reads in pertinent part:

> (a) In a proceeding for the enforcement of a claim for compensation under this chapter it is presumed, in the absence of substantial evidence to the contrary, that
>
> (1) the claim comes within the provisions of this chapter; . . .
>
> (3) the injury was not proximately caused by the intoxication of the injured employee. . . .

However, before the presumption attaches the employee must establish a preliminary link between the

disability and the employment. "[I]n claims `based on highly technical medical considerations' medical evidence is often necessary in order to make that connection." Id. at 316. "Two factors determine whether expert medical evidence is necessary in a given case: the probative value of the available lay evidence and the complexity of the medical facts involved." Veco, Inc. v. Wolfer, 693 P.2d 865, 871 (Alaska 1985). Once the employee makes a prima facie case of work relatedness the presumption of compensability attaches and shifts the burden of production to the employer. Id. at 869.

To overcome the presumption of compensability, the employer must present substantial evidence the disability is not work-related. Miller v. ITT Arctic Services, 577 P.2d 1044, 1046 (Alaska 1978). The court has consistently defined `substantial evidence' as `such relevant evidence as a reasonable mind might accept as adequate to support a conclusion'" Miller, 577 P.2d at 1046 (quoting Thornton, 411 P.2d at 209, 210). In Fireman's Fund American Insurance Cos. v. Gomes, 544 P.2d 1013, 1016 (Alaska 1976), the Court explained two possible ways to overcome the presumption: 1) producing affirmative evidence the injury was not work-related or 2) eliminating all reasonable possibilities the injury was work-related.

The same standards used to determine whether medical evidence is necessary to establish the preliminary link apply to determine whether medical evidence is necessary to overcome the presumption. Veco, 693 P.2d at 871. "Since the presumption shifts only the burden of production and not the burden of persuasion, the evidence tending to rebut the presumption should be examined by itself." Id. at 869.

If the employer produces substantial evidence that the disability is not work-related, the presumption drops out, and the employee must prove all the elements of the claim by a preponderance of the evidence. Id. at 870. "Where one has the burden of proving asserted facts by a preponderance of the evidence, he must induce a belief in the minds of [the triers of fact] that the asserted facts are probably true." Saxton v. Harris, 395 P.2d 71, 72 (Alaska 1964).

We find that the employee, through his testimony and the testimony of Lee Naccarato, established the presumption that his injury was not proximately caused by his intoxication.

AS 23.30.235 provides in part:

Compensation under this chapter may not be allowed for an injury . . . .

> (2) proximately caused by intoxication of the injured employee or proximately caused by the employee being under the influence of drugs unless the drugs were taken as prescribed by the employee's physician.

See also, Parris-Eastlake v. State of Alaska, AWCB Decision No. 96-0405 (October 2, 1996).

We find the employer has rebutted the AS 23.30.120 presumption and also proven that the employee's intoxication was a proximate cause of his injury. We look at all the evidence and place particular weight on the following: The employee admitted on a number of occasions, to the EMT's, the physician's assistant at the clinic, and the doctor at the clinic to ingesting alcohol. We find the employee's statements, made in anticipation of medical treatment to possess an inherent indicia of reliability. Accordingly, we give these statements greater weight then his later statements made in anticipation of litigation. Swain stated the employee's breath smelled of alcohol, not his clothes. Brown stated the employee not only smelled intoxicated, but also appeared intoxicated. Furthermore, all the medical providers seemed certain the employee suffered no head trauma from his fall.

In addition, P.A. Koenck stated that the employee was so intoxicated, his motor coordination would have been impaired. Furthermore, Dr. Propst testified that judgement is the first effect of alcohol impairment, followed by motor coordination.

We find the employee failed to prove that his intoxication was not a proximate cause of his injury. The employee relies on the argument that after Lee Naccarato left the site at 5:30, he completed one hour to