

ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004 8672

1171 SENATE JUDICIARY

1 (3) the cause and nature of the alleged injury or death;

2 (4) the year, month, day, and hour when and the particular locality
3 where the alleged injury or death occurred; and

4 (5) the other information that the division [BOARD] may require.

5 * **Sec. 33.** AS 23.30.070(b) is amended to read:

6 (b) Additional reports with [IN] respect to the injury and to the condition of
7 the employee shall be sent by the employer to the division [BOARD] at the times and
8 in the manner that the director [BOARD] prescribes.

9 * **Sec. 34.** AS 23.30.070(d) is amended to read:

10 (d) Mailing of the report and copy to the division [BOARD] in a stamped
11 envelope, within the time prescribed in (a) or (b) of this section, is compliance with
12 this section.

13 * **Sec. 35.** AS 23.30.070(f) is amended to read:

14 (f) An employer who fails or refuses to send a report required of the employer
15 by this section or who fails or refuses to send the report required by (a) of this section
16 within the time required shall, if so required by a hearing panel after a hearing
17 [THE BOARD], pay the employee or the legal representative of the employee or other
18 person entitled to compensation by reason of the employee's injury or death an
19 additional award equal to 20 percent of the amounts that were unpaid when due. The
20 award shall be against either the employer or the insurance carrier, or both.

21 * **Sec. 36.** AS 23.30.075 is amended to read:

22 **Sec. 23.30.075. Employer's liability to pay.** (a) An employer under this
23 chapter, unless exempted, shall either insure and keep insured for the employer's
24 liability under this chapter in an insurance company or association duly authorized to
25 transact the business of workers' compensation insurance in this state, or shall furnish
26 the division [BOARD] satisfactory proof of the employer's financial ability to pay
27 directly the compensation provided for. If an employer elects to pay directly, the
28 director [BOARD] may, in the director's [ITS] discretion, require the deposit of an
29 acceptable security, indemnity, or bond to secure the payment of compensation
30 liabilities as they are incurred.

31 (b) If an employer fails to insure and keep insured employees subject to this

1 chapter or fails to obtain a certificate of self-insurance from the division [BOARD],
2 upon conviction, the court shall impose a fine of \$10,000 and may impose a sentence
3 of imprisonment for not more than one year. If an employer is a corporation, all
4 persons who, at the time of the injury or death, had authority to insure the corporation
5 or apply for a certificate of self-insurance, and the person actively in charge of the
6 business of the corporation shall be subject to the penalties prescribed in this
7 subsection and shall be personally, jointly, and severally liable together with the
8 corporation for the payment of all compensation or other benefits for which the
9 corporation is liable under this chapter if the corporation at that time is not insured or
10 qualified as a self-insurer.

11 * **Sec. 37.** AS 23.30.080(d) is amended to read:

12 (d) If an employer fails to insure or provide security as required by
13 AS 23.30.075, the director [BOARD] may petition a hearing examiner to issue a
14 stop order prohibiting the use of employee labor by the employer until the employer
15 insures or provides security as required by AS 23.30.075. The failure of an employer
16 to file evidence of compliance as required by AS 23.30.085 creates a rebuttable
17 presumption that the employer has failed to insure or provide security as required by
18 AS 23.30.075. If the director presents evidence with the petition that hazards in
19 the employment constitute a danger that could reasonably be expected to
20 immediately cause an employee death or serious physical harm, the petition may
21 be heard on shortened notice. If an employer fails to comply with a stop order
22 issued under this section, a hearing examiner [THE BOARD] shall assess a civil
23 penalty of \$1,000 a [PER] day. The employer may not obtain a public contract with
24 the state or a political subdivision of the state for three years following the violation of
25 the stop order.

26 * **Sec. 38.** AS 23.30.080 is amended by adding new subsections to read:

27 (e) If an employer fails, refuses, or neglects to insure or provide security as
28 required by AS 23.30.075(a), the director may petition a hearing examiner to order
29 payment of a civil penalty to the state of an amount up to \$100 for each employee for
30 each day an employee is employed while the employer is uninsured or does not
31 provide the security required by AS 23.30.075(a). The failure of an employer to file

1 evidence of compliance as required by AS 23.30.085 creates a rebuttable presumption
2 that the employer has failed to obtain and keep insurance or provide security as
3 required by AS 23.30.075(a). If the director presents evidence with the petition that
4 hazards in the employment constitute a danger that could reasonably be expected to
5 immediately cause an employee death or serious physical harm, the petition may be
6 heard on shortened notice.

7 (f) If an employer fails to pay a civil penalty ordered under (d) or (e) of this
8 section within seven days after the date of service of the order upon the employer, the
9 director may declare the employer in default. The director shall file a certified copy of
10 the penalty order and declaration of default with the clerk of the superior court. The
11 court shall, upon the filing of the copy of the order and declaration, enter judgment for
12 the amount declared in default if it is in accordance with law. Anytime after a
13 declaration of default, the attorney general, when requested to do so by the director,
14 shall take appropriate action to assure collection of defaulted payment. Review of the
15 judgment may be had as provided under the Alaska Rules of Civil Procedure. Final
16 proceedings to execute the judgment may be had by writ of execution.

17 * **Sec. 39.** AS 23.30.085(a) is amended to read:

18 (a) An employer subject to this chapter, unless exempted, shall initially file
19 evidence of compliance with the insurance provisions of this chapter with the division
20 [BOARD], in the form prescribed by the director [IT]. The employer shall also give
21 evidence of compliance within 10 days after the termination of the employer's
22 insurance by expiration or cancellation. These requirements do not apply to an
23 employer who has certification from the division [BOARD] of the employer's
24 financial ability to pay compensation directly without insurance.

25 * **Sec. 40.** AS 23.30.090 is amended to read:

26 **Sec. 23.30.090. Self-insurance certificates.** If an employer has complied
27 with the provisions of this chapter relating to self-insurance and has paid annual
28 service fees assessed under AS 23.05.067, the director [BOARD] shall issue the
29 employer a certificate that shall remain in force for a period fixed by the director
30 [BOARD]. The director [BOARD] may, upon at least 10 days' notice and a hearing,
31 revoke a self-insurance certificate upon satisfactory proof that an employer is no

1 longer entitled to it. The hearing shall be held by a hearing examiner. The
2 hearing examiner shall make a proposed decision to the director, who may adopt,
3 amend or reject it in the director's discretion. After revocation, the director
4 [BOARD] may grant a new certificate to an employer, upon the employer's petition
5 and satisfactory proof of the employer's financial ability as provided in this chapter.
6 An employer authorized as a self-insurer shall provide claims facilities through its
7 own staffed adjusting facilities located within the state, or independent, licensed,
8 resident adjusters with power to effect settlement within the state.

9 * Sec. 41. AS 23.30.090 is amended by adding a new subsection to read:

10 (b) All testimony given before a hearing examiner under this section shall be
11 recorded, but need not be transcribed unless further review is initiated. Hearings
12 before a hearing examiner shall be open to the public.

13 * Sec. 42. AS 23.30.095(a) is amended to read:

14 (a) The employer shall furnish medical, surgical, and other attendance or
15 treatment, nurse and hospital service, medicine, crutches, and apparatus for the period
16 that [WHICH] the nature of the injury or the process of recovery requires, not
17 exceeding two years from and after the date of injury to the employee. However, if
18 the condition requiring the treatment, apparatus, or medicine is a latent one, the two-
19 year period runs from the time the employee has knowledge of the nature of the
20 employee's disability and its relationship to the employment and after disablement. If
21 [IT SHALL BE ADDITIONALLY PROVIDED THAT, IF] continued treatment or
22 care or both beyond the two-year period is indicated, the injured employee has the
23 right of review by a hearing panel [THE BOARD]. The hearing panel [BOARD]
24 may authorize continued treatment or care or both as the process of recovery may
25 require. When medical care is required, the injured employee may designate a
26 licensed physician to provide all medical and related benefits. The employee may not
27 make more than one change in the employee's choice of attending physician without
28 the written consent of the employer. Referral to a specialist by the employee's
29 attending physician is not considered a change in physicians. Upon procuring the
30 services of a physician, the injured employee shall give proper notification of the
31 selection to the employer within a reasonable time after first being treated. Notice of a

1 change in the attending physician shall be given before the change.

2 * **Sec. 43.** AS 23.30.095(c) is amended to read:

3 (c) A claim for medical or surgical treatment [,] or treatment requiring
4 continuing and multiple treatments of a similar nature is not valid and enforceable
5 against the employer unless, within 14 days following treatment, the physician or
6 health care provider giving the treatment or the employee receiving it furnishes to the
7 employer and the division [BOARD] notice of the injury and treatment, preferably on
8 a form prescribed by the director [BOARD]. A hearing panel [THE BOARD] shall,
9 however, excuse the failure to furnish notice within 14 days when the hearing panel
10 [IT] finds it to be in the interest of justice to do so, and the hearing panel [IT] may,
11 upon application by a party in interest, make an award for the reasonable value of the
12 medical or surgical treatment so obtained by the employee. When a claim is made for
13 a course of treatment requiring continuing and multiple treatments of a similar nature,
14 in addition to the notice, the physician or health care provider shall furnish a written
15 treatment plan if the course of treatment will require more frequent outpatient visits
16 than the standard treatment frequency for the nature and degree of the injury and the
17 type of treatments. The treatment plan shall be furnished to the employee and the
18 employer within 14 days after treatment begins. The treatment plan must include
19 objectives, modalities, frequency of treatments, and reasons for the frequency of
20 treatments. If the treatment plan is not furnished as required under this subsection,
21 neither the employer nor the employee may be required to pay for treatments that
22 exceed the frequency standard. The director shall propose and the department
23 [BOARD] shall adopt regulations establishing standards for frequency of treatment.

24 * **Sec. 44.** AS 23.30.095(d) is amended to read:

25 (d) If at any time during the period the employee unreasonably refuses to
26 submit to medical or surgical treatment, a hearing panel [THE BOARD] may by
27 order suspend the payment of further compensation while the refusal continues, and no
28 compensation may be paid at any time during the period of suspension, unless the
29 circumstances justified the refusal.

30 * **Sec. 45.** AS 23.30.095(e) is amended to read:

31 (e) The employee shall, after an injury, at reasonable times during the

1 continuance of the disability, if requested by the employer or when ordered by a
2 hearing panel [THE BOARD], submit to an examination by a physician or surgeon of
3 the employer's choice authorized to practice medicine under the laws of the
4 jurisdiction in which the examination occurs, furnished and paid for by the employer.
5 The employer may not make more than one change in the employer's choice of a
6 physician or surgeon without the written consent of the employee. Referral to a
7 specialist by the employer's physician is not considered a change in physicians. An
8 examination requested by the employer not less than 14 days after injury, and every 60
9 days thereafter, shall be presumed to be reasonable, and the employee shall submit to
10 the examination without further request or order by a hearing panel [THE BOARD].
11 Unless medically appropriate, the physician shall use existing diagnostic data to
12 complete the examination. Facts relative to the injury or claim communicated to or
13 otherwise learned by a physician or surgeon who may have attended or examined the
14 employee [,] or who may have been present at an examination are not privileged,
15 either in the hearings provided for in this chapter or an action to recover damages
16 against an employer who is subject to the compensation provisions of this chapter. If
17 an employee refuses to submit to an examination provided for in this section, the
18 employee's rights to compensation shall be suspended until the obstruction or refusal
19 ceases, and the employee's compensation during the period of suspension may, in the
20 discretion of a hearing panel [THE BOARD] or the court determining an action
21 brought for the recovery of damages under this chapter, be forfeited. In [THE
22 BOARD IN] any case of death, a hearing examiner may order [REQUIRE] an
23 autopsy at the expense of the party requesting the autopsy. An autopsy may not be
24 held without notice first being given to the widow or widower or next of kin if they
25 reside in the state or their whereabouts can be reasonably ascertained, of the time and
26 place of the autopsy and reasonable time and opportunity given the widow or widower
27 or next of kin to have a representative present to witness the autopsy. If adequate
28 notice is not given, the findings from the autopsy may be suppressed on petition
29 [MOTION] made to a hearing examiner [THE BOARD] or to the superior court, as
30 the case may be.

31 * **Sec. 46.** AS 23.30.095(f) is amended to read:

1 (f) All fees and other charges for medical treatment or service shall be subject
2 to regulation by the department [BOARD] but may not exceed usual, customary, and
3 reasonable fees for the treatment or service in the community in which it is rendered,
4 as determined by the director [BOARD]. An employee may not be required to pay a
5 fee or charge for medical treatment or service. The director shall propose and the
6 department [BOARD] shall adopt updated usual, customary, and reasonable medical
7 fee schedules at least once each year.

8 * Sec. 47. AS 23.30.095(h) is amended to read:

9 (h) Upon the filing with the division [BOARD] by a party in interest of an
10 application or other pleading, all parties to the proceeding must immediately, or in any
11 event within five days after service of the pleading, send to the division [BOARD] the
12 original signed reports of all physicians relating to the proceedings that [WHICH]
13 they may have in their possession or under their control, and copies of the reports shall
14 be served by the party immediately on any [THE] adverse party. There is a
15 continuing duty on all [THE] parties to [SO] file and serve all the reports during the
16 pendency of the proceeding.

17 * Sec. 48. AS 23.30.095(j) is amended to read:

18 (j) The director [BOARD] may appoint a medical services review committee,
19 or contract with an existing organization in the state or another state, to assist and
20 advise the director [BOARD] in matters involving the appropriateness, necessity, and
21 cost of medical and related services provided under this chapter.

22 * Sec. 49. AS 23.30.095(k) is amended to read:

23 (k) In the event of a medical dispute regarding determinations of causation,
24 medical stability, ability to enter a reemployment plan, degree of impairment,
25 functional capacity, the amount and efficacy of the continuance of or necessity of
26 treatment, or compensability between the employee's attending physician and the
27 employer's independent medical evaluation, the director [BOARD] may require that a
28 second independent medical evaluation be conducted by a physician or physicians
29 selected [BY THE BOARD] from a list established and maintained by the director
30 [BOARD]. The cost of an examination and medical report shall be paid by the
31 employer. The report of an independent medical examiner shall be furnished to the

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

5 * **Sec. 50.** AS 23.30.100(a) is amended to read:

6 (a) Notice of an injury or death with [IN] respect to which compensation is
7 payable under this chapter shall be given within 30 days after the date of such injury
8 or death to the division [BOARD] and to the employer.

9 * **Sec. 51.** AS 23.30.100(c) is amended to read:

10 (c) Notice shall be given to the division [BOARD] by delivering it or sending
11 it by mail addressed to the division's [BOARD'S] office, and to the employer by
12 delivering it to the employer or by sending it by mail addressed to the employer at the
13 employer's last known place of business. If the employer is a partnership, the notice
14 may be given to a partner, or, if a corporation, the notice may be given to an agent or
15 officer upon whom legal process may be served or who is in charge of the business in
16 the place where the injury occurred.

17 * **Sec. 52.** AS 23.30.100(d) is amended to read:

18 (d) Failure to give notice does not bar a claim under this chapter

19 (1) if the employer, an agent of the employer in charge of the business
20 in the place where the injury occurred, or the carrier had knowledge of the injury or
21 death and a hearing panel [THE BOARD] determines that the employer or carrier has
22 not been prejudiced by failure to give notice;

23 (2) if a hearing panel [THE BOARD] excuses the failure on the
24 ground that, for some satisfactory reason, notice could not be given;

25 (3) unless objection to the failure is raised before a hearing panel
26 [THE BOARD] at the first hearing of a claim for compensation with [IN] respect to
27 the injury or death.

28 * **Sec. 53.** AS 23.30.105(a) is amended to read:

29 (a) The right to compensation for disability under this chapter is barred unless
30 a claim for it is filed within two years after the employee has knowledge of the nature
31 of the employee's disability and its relation to the employment and after disablement.

1 However, the maximum time for filing the claim in any event other than arising out of
2 an occupational disease shall be four years from the date of injury, and the right to
3 compensation for death is barred unless a claim [THEREFOR] is filed within one year
4 after the death, except that, if payment of compensation has been made without an
5 award on account of the injury or death, a claim may be filed within two years after
6 the date of the last payment of benefits under AS 23.30.041, 23.30.180, 23.30.185,
7 23.30.190, 23.30.200, or 23.30.215. In [IT IS ADDITIONALLY PROVIDED THAT,
8 IN] the case of latent defects pertinent to and causing compensable disability, the
9 injured employee has the full right to claim compensation as shall be determined by a
10 hearing panel [THE BOARD], time limitations notwithstanding.

11 * Sec. 54. AS 23.30.107 is amended to read:

12 **Sec. 23.30.107. Release of information.** (a) Upon written request, an
13 employee shall provide written authority to the employer, carrier, rehabilitation
14 specialist, or reemployment benefits administrator to obtain medical and rehabilitation
15 information relative to the employee's injury. The request must include notice of the
16 employee's right to file a petition for a protective order with the division [BOARD]
17 and must be served by certified mail to the employee's address on the notice of injury
18 or by hand delivery to the employee. This subsection may not be construed to
19 authorize an employer, carrier, rehabilitation specialist, or reemployment benefits
20 administrator to request medical or other information that is not applicable to the
21 employee's injury.

22 (b) Medical or rehabilitation records in an employee's file maintained by the
23 division or held by the commission [BOARD] are not public records subject to
24 public inspection and copying under AS 40.25. This subsection does not prohibit

25 (1) the reemployment benefits administrator, the division, the office of
26 the commission [BOARD], or the department from releasing medical or rehabilitation
27 records in an employee's file, without the employee's consent, to a physician providing
28 medical services under AS 23.30.095(k) or 23.30.110(g), a party to a claim filed by
29 the employee, or a governmental agency; or

30 (2) the quoting or discussing of medical or rehabilitation records
31 contained in an employee's file during a hearing on a claim for compensation [,] or in

1 a decision and order of the hearing examiner, hearing panel, or commission
2 [BOARD].

3 * **Sec. 55.** AS 23.30.108 is amended to read:

4 **Sec. 23.30.108. Prehearing conferences [PREHEARINGS] on discovery**
5 **matters; objections to requests for release of information; sanctions for**
6 **noncompliance.** (a) If an employee objects to a request for written authority under
7 AS 23.30.107, the employee must file a petition with the division [BOARD] seeking a
8 protective order within 14 days after service of the request. If the employee fails to
9 file a petition and fails to deliver the written authority as required by AS 23.30.107
10 within 14 days after service of the request, the employee's rights to benefits under this
11 chapter are suspended until the written authority is delivered.

12 (b) If a petition seeking a protective order is filed, the division shall
13 promptly notify the commission, and the commission clerk [BOARD] shall set a
14 prehearing conference within 21 days after the filing date of the petition. At a
15 prehearing conference conducted by a hearing examiner [THE BOARD'S
16 DESIGNEE], the hearing examiner [BOARD'S DESIGNEE] has the authority to
17 resolve disputes concerning the written authority. If the hearing examiner [BOARD
18 OR THE BOARD'S DESIGNEE] orders delivery of the written authority and if the
19 employee refuses to deliver it within 10 days after being ordered to do so, the
20 employee's rights to benefits under this chapter are suspended until the written
21 authority is delivered. During any period of suspension under this subsection, the
22 employee's benefits under this chapter are forfeited unless a hearing examiner [THE
23 BOARD], or the court determining an action brought for the recovery of damages
24 under this chapter, determines that good cause existed for the refusal to provide the
25 written authority.

26 (c) At a prehearing conference on discovery matters conducted by a hearing
27 examiner [THE BOARD'S DESIGNEE], the hearing examiner [BOARD'S
28 DESIGNEE] shall direct parties to sign releases or produce documents, or both, if the
29 parties present releases or requests for documents that are likely to lead to admissible
30 evidence relative to an employee's injury. If a party refuses to comply with an order
31 by a hearing examiner [THE BOARD'S DESIGNEE OR THE BOARD] concerning

1 discovery matters, a hearing examiner [THE BOARD] may impose appropriate
2 sanctions in addition to any forfeiture of benefits, including dismissing the party's
3 claim, petition, or defense. A party may petition the commission for expedited
4 review of an order of a hearing examiner on discovery matters within seven days
5 after the date of service of the challenged order, and a party opposing the petition
6 shall respond within seven days after service of the petition. The commission
7 shall determine whether to grant or deny a petition for review within 10 days
8 after a response is due. If [A DISCOVERY DISPUTE COMES BEFORE] the
9 commission grants a petition [BOARD] for expedited review of a discovery
10 determination by a hearing examiner [THE BOARD'S DESIGNEE], the commission
11 [BOARD] may not consider any evidence or argument that was not presented to the
12 hearing examiner [BOARD'S DESIGNEE], but shall determine the issue solely on
13 the basis of the written record. The decision by the commission [BOARD] on a
14 discovery dispute shall be made within 30 days. The commission [BOARD] shall
15 uphold a hearing examiner's [THE DESIGNEE'S] decision except when the hearing
16 examiner's [BOARD'S DESIGNEE'S] determination is an abuse of discretion.

17 * Sec. 56. AS 23.30.110 is amended to read:

18 **Sec. 23.30.110. Procedure on claims and petitions.** (a) Subject to the
19 provisions of AS 23.30.105, a claim for or petition relating to compensation or
20 benefits or both may be filed with the division [BOARD] in accordance with its
21 regulations at any time after the first seven days of disability following an injury, or at
22 any time after death, and a hearing panel [THE BOARD] may hear and determine all
23 questions with [IN] respect to the claim or petition.

24 (b) Within 10 days after a claim or petition is filed, the division [BOARD], in
25 accordance with its regulations, shall notify the opposing party, employer, and any
26 other person, other than the claimant or petitioner, whom the director [BOARD]
27 considers an interested party that a claim or petition has been filed. The notice may
28 be served personally [UPON THE EMPLOYER OR OTHER PERSON,] or sent by
29 certified [REGISTERED] mail.

30 (c) Before a hearing is scheduled, the party seeking a hearing shall file with
31 the office of the commission a request for a hearing together with an affidavit stating

1 that the party has completed necessary discovery, has obtained necessary evidence,
2 and is prepared for the hearing. An opposing party shall have 10 days after the
3 hearing request is filed to file a response. If a party opposes the hearing request, a
4 hearing examiner [THE BOARD OR A BOARD DESIGNEE] shall, within 30 days
5 after [OF] the filing of the opposition, conduct a pre-hearing conference, plan the
6 timing and sequence of discovery and other preliminary matters, and set a
7 reasonable hearing date. If opposition is not filed, a hearing examiner shall
8 schedule a hearing not [HEARING SHALL BE SCHEDULED NO] later than 60
9 days after the receipt of the hearing request. The commission clerk [BOARD] shall
10 give each party at least 10 days' notice of the hearing, either personally or by certified
11 mail. After a hearing has been scheduled, the parties may not stipulate to change the
12 hearing date or to cancel, postpone, or continue the hearing, except for good cause as
13 determined by the hearing examiner. The hearing shall be before a hearing panel
14 unless otherwise provided by this chapter [BOARD]. After completion of the
15 hearing, the hearing examiner [BOARD] shall close the hearing record. If a
16 settlement agreement is reached by the parties less than 14 days before the hearing, the
17 parties shall appear at the time of the scheduled hearing to state the terms of the
18 settlement agreement. A decision by a majority of the hearing panel shall be the
19 decision of the panel. After the hearing panel has reached a decision, the hearing
20 examiner shall prepare a draft of the decision and circulate the decision to the
21 other panel members for comment, revision, and approval. A panel member who
22 does not agree, in whole or in part, with the decision of the hearing panel shall
23 prepare a written dissent. Within 30 days after the hearing record closes, the
24 hearing examiner [BOARD] shall file the hearing panel's [ITS] decision with any
25 dissent. If the employer controverts a claim on a director-prescribed [BOARD-
26 PRESCRIBED] controversion notice and the employee does not request a hearing
27 within two years following the filing of the controversion notice, the claim is denied.

28 (d) At the hearing, the parties [CLAIMANT AND THE EMPLOYER] may
29 each present evidence with [IN] respect to the claim or petition and may be
30 represented by any person authorized in writing for that purpose.

31 (e) The order rejecting the claim or petition, or making the award, referred to

1 in this chapter as a compensation order, shall be filed in the office of the commission
2 [BOARD], and a copy of it shall be sent by certified [REGISTERED] mail to the
3 parties [CLAIMANT AND TO THE EMPLOYER] at the last known address of each.

4 (f) An award of compensation for disability or an order dismiss' ig a claim
5 may be made after the death of an injured employee.

6 (g) An injured employee claiming or entitled to compensation shall submit to
7 the physical examination by a duly qualified physician that a hearing panel [WHICH
8 THE BOARD] may require. The place or places shall be reasonably convenient for
9 the employee. The physician or physicians as the employee, employer, or carrier may
10 select and pay for may participate in an examination if the employee, employer, or
11 carrier so requests. Proceedings shall be suspended and no compensation may be
12 payable for a period during which the employee refuses to submit to examination.

13 (h) The filing of a hearing request under (c) of this section suspends the
14 running of the two-year time period specified in (c) of this section. However, if the
15 employee subsequently requests a continuance of the hearing and the request is
16 granted [APPROVED BY THE BOARD], the granting of the continuance renders the
17 request for hearing inoperative, and the two-year time period specified in (c) of this
18 section continues to run again from the date of a hearing examiner's [THE
19 BOARD'S] notice to the employee of [THE BOARD'S GRANTING OF] the
20 continuance and of its effect. If the employee fails to again request a hearing before
21 the conclusion of the two-year time period in (c) of this section, the claim is denied.

22 * Sec. 57. AS 23.30.110 is amended by adding new subsections to read:

23 (i) An order dismissing a claim in whole or in part may be made before a
24 hearing on the merits of the claim when (1) the claim requests relief that cannot be
25 granted under this chapter; (2) there is a lack of jurisdiction over the subject matter of
26 the claim or the person under this chapter; (3) division process or service of process
27 was insufficient; (4) the claim has not been prosecuted or a hearing was not requested
28 within the time allowed in (c) of this section; or (5) the claim is barred by a statute of
29 limitation. If, within 60 days after service of an order dismissing a claim under (1) -
30 (3) of this subsection, the defects stated in the order are cured, the dismissal may be
31 vacated. Otherwise, the order of dismissal is a final compensation order.

1 (j) At any time, a party may petition for a summary decision on all or part of a
 2 claim. The hearing panel shall grant the petition if (1) the hearing panel finds all
 3 reasonable discovery has been made on the issues presented; and (2) the record shows
 4 that there is no genuine issue of any material fact and that the petitioner is entitled to a
 5 decision as a matter of law. The hearing examiner may file a compensation order in
 6 favor of the petitioner if the hearing panel's summary decision adjudicates all issues in
 7 the claim with respect to the petitioner.

8 * **Sec. 58.** AS 23.30 is amended by adding a new section to read:

9 **Sec. 23.30.112. Hearing examiners.** (a) Unless otherwise provided in this
 10 chapter, hearings on claims and petitions shall be conducted by a hearing examiner
 11 employed by the commission. A hearing examiner shall be

12 (1) licensed to practice law in this state at the time of appointment and
 13 have three years experience in this state in the field of workers' compensation or in a
 14 similar field of practice;

15 (2) compensated at Range 24 of the schedule set out in
 16 AS 39.27.011(a), but is not a public employee for purposes of AS 23.40; and

17 (3) impartial and unbiased in all proceedings under this chapter,
 18 conduct hearings as a member of a hearing panel fairly and impartially on claims and
 19 petitions arising under this chapter, and file written decisions and orders.

20 (b) A hearing examiner may

21 (1) for the purposes of this chapter, subpoena witnesses, administer or
 22 cause to be administered oaths, and order production of parts of the books and records
 23 of the parties to a proceeding or other records, documents, or papers that relate to
 24 questions in dispute; the superior court, on application of the hearing examiner under
 25 AS 44.62.590, shall enforce the attendance and testimony of witnesses and the
 26 production and examination of books, papers, and records;

27 (2) direct a physician or hospital rendering medical treatment or
 28 service under this chapter to furnish to the division periodic reports of treatment or
 29 services on forms prescribed by the division;

30 (3) arrange to have hearings held by the commission, officer, or
 31 tribunal having authority to hear cases arising under the workers' compensation law of

1 any other state, of the District of Columbia, or of any territory of the United States,
2 when a proceeding in this state so requires; the testimony and proceedings at the
3 hearing shall be reported to the commission and are a part of the record in the case;
4 evidence taken at the hearing is subject to rebuttal upon final hearing under this
5 chapter.

6 **Sec. 23.30.113. Hearings before a hearing examiner or hearing panel. (a)**

7 The hearing examiner or hearing panel, in conducting a hearing under AS 23.30.110,
8 is not bound by common law or statutory rules of evidence or by technical or formal
9 rules of procedure, except as provided by this chapter and the regulations of the
10 commission. The hearing may be conducted in the manner designed to best ascertain
11 the rights of the parties. In proceedings before hearing examiners and hearing panels,
12 the administrative adjudication procedures of AS 44.62 (Administrative Procedure
13 Act) do not apply, except that AS 44.62.410(b), 44.62.460(a) - (d), 44.62.470,
14 44.62.480, 44.62.510, and 44.62.590 shall apply to proceedings under this chapter.
15 Declarations of a deceased employee concerning the injury with respect to which the
16 investigation or inquiry is being made or the hearing conducted shall be received in
17 evidence and are, if corroborated by other evidence, sufficient to establish the injury.

18 (b) The hearing examiner shall preside over hearings of a hearing panel and
19 perform all other functions in an impartial manner with due regard for the rights of all
20 parties and the facts and the law, and consistent with the orderly and prompt dispatch
21 of proceedings under this chapter. The hearing examiner shall rule on questions of
22 procedure, the admission and exclusion of evidence, and make rulings and instruct the
23 board members on matters of law.

24 (c) A hearing examiner shall voluntarily seek disqualification and withdraw
25 from a case in which the hearing examiner cannot accord a fair and impartial hearing
26 or consideration. A request for disqualification of a hearing examiner for bias or
27 partiality shall be determined by the hearing examiner concerned or, if the hearing is
28 before a hearing panel, by the other members of the panel. Except as otherwise
29 permitted by law, hearing examiners or a member of a hearing panel may not engage
30 in interviews with or hear evidence or argument from, a party directly or indirectly,
31 except upon opportunity for all parties to be present. Copies of all communications to

1 hearing examiners or a member of a hearing panel shall be served on all other parties.

2 (d) All testimony given during a hearing before a hearing examiner or a
3 hearing panel shall be recorded but need not be transcribed unless further review is
4 initiated. Hearings before a hearing examiner or hearing panel shall be open to the
5 public.

6 * **Sec. 59.** AS 23.30.115 is amended to read:

7 **Sec. 23.30.115. Attendance and fees of witnesses.** (a) A person is not
8 required to attend as a witness in a hearing [PROCEEDING] before the commission,
9 a hearing panel, or hearing examiner [BOARD] at a place more than 100 miles
10 from the person's place of residence, unless the person's lawful mileage and fee for
11 one day's attendance is first paid or tendered to the person; but the testimony of a
12 witness may be taken by deposition or interrogatories according to the Rules of Civil
13 Procedure.

14 (b) A witness summoned to testify in a hearing [PROCEEDING] before the
15 commission, a hearing panel, or hearing examiner [BOARD] or whose deposition
16 is taken shall receive the same fees and mileage as a witness in the superior court.
17 The commission clerk may issue subpoenas and subpoenas duces tecum to
18 summon a witness to testify in a hearing or deposition and to produce records.
19 The superior court shall enforce the subpoenas on application by the commission
20 in the manner provided in AS 44.62.590.

21 * **Sec. 60.** AS 23.30.120(b) is amended to read:

22 (b) If delay in giving notice is excused by the hearing panel [BOARD] under
23 AS 23.30.100(d)(2), the burden of proof of the validity of the claim shifts to the
24 employee, notwithstanding the provisions of (a) of this section.

25 * **Sec. 61.** AS 23.30.122 is repealed and reenacted to read:

26 **Sec. 23.30.122. Credibility of witnesses.** The hearing panel has the sole
27 power to determine the credibility of testimony presented by a witness who appears in
28 a hearing. When credibility is disputed, the hearing panel's determination of
29 credibility must be supported by specific findings.

30 * **Sec. 62.** AS 23.30 is amended by adding a new section to read:

31 **Sec. 23.30.124. Reconsideration of compensation order.** (a) A hearing

1 panel may order a reconsideration of all or part of a compensation order on the hearing
2 panel's own motion or on petition of a party. A petition for reconsideration must be
3 filed with the office of the commission within 15 days after mailing of the
4 compensation order. The power to order reconsideration expires 30 days after the
5 mailing of a compensation order. If an order of reconsideration is not filed with the
6 office of the commission within the time allowed for ordering reconsideration, the
7 petition is considered denied.

8 (b) If reconsideration is ordered under (a) of this section, the compensation
9 order under reconsideration is stayed until the decision on reconsideration is filed.
10 The case may be reconsidered by the hearing panel on of all the pertinent parts of the
11 record and the additional arguments that are permitted by the hearing examiner. A
12 written decision on reconsideration shall be filed with the commission within 30 days
13 after the date the order of reconsideration was filed.

14 * **Sec. 63.** AS 23.30.125 is repealed and reenacted to read:

15 **Sec. 23.30.125. Administrative review of compensation order.** (a) A
16 compensation order becomes effective when filed with the office of the commission as
17 provided in AS 23.30.110, and, unless proceedings to reconsider, suspend, or set aside
18 the order are instituted as provided in this chapter, the order becomes final on the 31st
19 day after it is filed.

20 (b) Notwithstanding other provisions of law, a decision or order of a hearing
21 examiner or hearing panel is subject to review by the commission as provided in this
22 chapter.

23 (c) If a compensation order is not in accordance with law or fact, the order
24 may be suspended or set aside, in whole or in part, through proceedings in the
25 commission brought by a party in interest against all other parties to the proceedings
26 before the hearing panel or hearing examiner. The payment of the amounts required
27 by an award may not be stayed pending a final decision in the proceeding unless, upon
28 application for a stay, the commission, on hearing, after not less than three days' notice
29 to the parties in interest and the director, allows the stay of payment, in whole or in
30 part, where the party filing the application would otherwise suffer irreparable damage.
31 The order of the commission allowing a stay must contain a specific finding, based

1 upon evidence submitted to the commission and identified by reference to the
2 evidence, that irreparable damage would result to the party applying for a stay and
3 specifying the nature of the damage.

4 (d) Proceedings for reconsidering, suspending, setting aside, or enforcing a
5 compensation order, whether rejecting a claim or making an award, may not be
6 instituted, except as provided in this chapter.

7 * **Sec. 64.** AS 23.30 is amended by adding new sections to read:

8 **Sec. 23.30.126. Review of director's decision.** (a) A decision by the director
9 that affects a right, privilege, benefit, or duty that is imposed or conferred under this
10 chapter is subject to review by the commission. A decision by the director becomes
11 effective when filed with the division, and, unless proceedings to suspend or set aside
12 the decision are instituted as provided in this section, the decision becomes final on the
13 31st day after it is filed.

14 (b) If a decision of the director is not in accordance with law or fact, the
15 decision may be suspended or set aside, in whole or in part, through proceedings in the
16 commission brought by a party in interest against the director and all other parties to
17 the proceedings. The decision may not be stayed pending final decision in the
18 proceeding unless, upon application for a stay, the commission, on hearing, after not
19 less than three days notice to the parties in interest and the director, allows the stay, in
20 whole or in part, where irreparable damage would otherwise result. The order of the
21 commission allowing the stay shall contain a specific finding, based upon evidence
22 submitted to the commission and identified by reference to it, that irreparable damage
23 would result to the party applying for a stay, and specifying the nature of the damage.

24 (c) Proceedings for suspending, setting aside, or enforcing a director's decision
25 or determination may not be instituted except as provided in this chapter.

26 **Sec. 23.30.127. Appeals to commission.** (a) A party in interest may appeal a
27 compensation order issued by a hearing examiner or a hearing panel to the
28 commission within 30 days after the compensation order is filed with the office of the
29 commission under AS 23.30.110. The director may intervene in an appeal. If a party
30 in interest is not represented by counsel and the compensation order concerns an
31 unsettled question of law, the director may file an appeal to obtain a ruling on the

1 question by the commission.

2 (b) A party in interest may appeal a decision of the director to the commission
3 within 30 days after the decision is filed with the division.

4 (c) An appeal shall be initiated by filing with the office of the commission

5 (1) a signed notice of appeal specifying the compensation order or
6 director's decision appealed from;

7 (2) a statement of the grounds upon which the appeal is taken; and

8 (3) other materials the commission may by regulation require.

9 (d) A cross-appeal may be initiated by filing with the office of the commission
10 a signed notice of cross-appeal within 30 days after the decision is filed or within 15
11 days after service of notice of an appeal, whichever is later. The notice of cross-
12 appeal shall specify the compensation order appealed from and the grounds upon
13 which the cross-appeal is taken.

14 (e) The office of the commission may charge a fee not to exceed \$100, for
15 filing appeals and cross-appeals, except that the office of the commission may not
16 charge a fee if the appellant is the state or a political subdivision of the state. The
17 commission may require an appellant to pay the costs of the transcript of hearing and
18 the preparation of the record on appeal. The commission may require cross-appellants
19 or intervenors to share in the costs.

20 (f) If a request for reconsideration of a hearing panel's decision is timely filed
21 with the office of the commission, the notice of appeal must be filed within 30 days
22 after the reconsideration decision is mailed to the parties, or the date the request for
23 reconsideration is considered denied, in the absence of any action on the request,
24 whichever is earlier.

25 (g) The commission may require written briefs and make other rules and
26 orders to facilitate the business of the commission and advance the prompt, fair, and
27 just disposition of appeals.

28 **Sec. 23.30.128. Commission proceedings.** (a) The commission may review
29 de novo all discretionary actions, findings of fact, and conclusions of law by the
30 hearing examiner, hearing panel, or the director in hearing, determining or otherwise
31 acting on any compensation claim or petition. A hearing panel's findings regarding

1 the credibility of testimony of a witness who appeared in the hearing is binding on the
2 commission, but all other findings, including the weight to be accorded medical
3 testimony and reports, may be set aside by the commission. The findings of the
4 hearing panel, if not set aside by the commission, are conclusive.

5 (b) The matter on appeal shall be decided by the commission on the record
6 made before the director, hearing examiner, or hearing panel, a transcript or recording
7 of the proceedings before the director, hearing examiner, or hearing panel, and oral
8 argument and written briefs allowed by the commission. Except as provided in (c) of
9 this section, new or additional evidence may not be received with respect to the
10 appeal.

11 (c) The commission may hold hearings and receive evidence on applications
12 for (1) stays under AS 23.30.125; (2) attorney fees and costs of appeal; (3) waiver of
13 fees by indigent appellants; or (4) dismissal of appeals for failure to prosecute or upon
14 settlement. The commission may rely on new or additional evidence presented during
15 the hearing in making its decision on the application.

16 (d) The commission may affirm, reverse, or modify a decision or order upon
17 review and issue other orders as appropriate. The commission may remand matters it
18 determines were improperly, incompletely, or otherwise insufficiently developed. The
19 commission may remand for further proceedings and appropriate action with or
20 without relinquishing the commission's jurisdiction of the appeal. The administrative
21 adjudication procedures of AS 44.62 (Administrative Procedure Act) do not apply to
22 the proceedings of the commission.

23 (e) Within 90 days after written briefing on the appeal is completed or oral
24 argument is held, whichever is later, the commission shall issue a decision in writing.
25 The decision must contain a concise statement of reasons for the decision, including
26 findings of fact, if required, and conclusions of law. The commission shall serve each
27 party and the director with a copy of the decision. Appeals may be expedited for good
28 cause by the commission. Unless reconsideration is ordered under (f) of this section, a
29 decision under this subsection is the final commission decision.

30 (f) A party or the director may request reconsideration of a decision issued
31 under (e) of this section within 30 days after the date of service shown in the

1 certificate of service of the decision. The request must state specific grounds for
2 reconsideration. Reconsideration may be granted if, in reaching the decision, the
3 commission (1) overlooked, misapplied, or failed to consider a statute, regulation,
4 court or administrative decision, or legal principle directly controlling; (2) overlooked
5 or misconceived a material fact; (3) misconceived a material question in the case; or
6 (4) applied law in the ruling that has subsequently changed. The commission may
7 issue an order for reconsideration of all or part of the decision upon request of a party
8 or the director. Reconsideration is based on the record, unless the commission allows
9 additional argument. The power to order reconsideration expires 60 days after the
10 date of service, as shown on the certificate of service, of a decision issued under (e) of
11 this section. If the commission does not issue an order for reconsideration within the
12 time allowed for ordering reconsideration, a request for reconsideration is considered
13 denied. If reconsideration is ordered, the commission shall issued a decision within 30
14 days after the close of the record on reconsideration. The commission shall serve each
15 party in the case with a copy of the decision upon reconsideration. The decision upon
16 reconsideration is the final commission decision.

17 (g) A decision of the commission becomes final on the

18 (1) 31st day after the date of service of a decision if reconsideration is
19 not requested; or

20 (2) 61st day after the date of service of a decision if reconsideration is
21 requested but an order for reconsideration is not issued; or

22 (3) date of service of the commission decision upon reconsideration
23 under (f) of this section if reconsideration is requested and an order for reconsideration
24 is issued.

25 **Sec. 23.30.129. Judicial review of commission orders.** (a) Notwithstanding
26 the provisions of AS 44.62.560, orders of the commission may not be appealed to the
27 superior court. Consistent with AS 22.05.010(b), final decisions of the commission
28 may be appealed to the supreme court, and other orders may be reviewed by the
29 supreme court as provided by the Alaska Rules of Appellate Procedure.

30 (b) A finding by the commission concerning the weight to be accorded a
31 witness's testimony, including medical testimony and reports, is conclusive even if the

1 evidence is conflicting or susceptible to contrary conclusions. The commission's
2 findings of fact may be reversed on appeal if not supported by substantial evidence in
3 light of the whole record.

4 * Sec. 65. AS 23.30.130 is amended to read:

5 **Sec. 23.30.130. Modification of awards.** (a) A party in interest or the
6 director may petition to modify a compensation order [UPON ITS OWN
7 INITIATIVE, OR UPON THE APPLICATION OF ANY PARTY IN INTEREST] on
8 the ground of a change in conditions, including, for the purposes of AS 23.30.175, a
9 change in residence, or because of a mistake in a [ITS] determination of a material
10 fact. A hearing panel [, THE BOARD] may, before one year after the date of the last
11 payment of compensation benefits under AS 23.30.180, 23.30.185, 23.30.190,
12 23.30.200, or 23.30.215, whether or not a compensation order has been issued, or
13 before one year after the rejection of a claim, act on the petition and review a
14 compensation case under the procedure prescribed with [IN] respect to [OF] claims in
15 AS 23.30.110. Under AS 23.30.110, a hearing panel [THE BOARD] may issue a
16 new compensation order that [WHICH] terminates, continues, reinstates, increases, or
17 decreases the compensation, or award compensation.

18 (b) A new order does not affect compensation previously paid, except that an
19 award increasing the compensation rate may be made effective from the date of the
20 injury, and, if part of the compensation due or to become due is unpaid, an award
21 decreasing the compensation rate may be made effective from the date of the injury,
22 and payment made earlier in excess of the decreased rate shall be deducted from the
23 unpaid compensation, in the manner the hearing panel [BOARD] determines.

24 * Sec. 66. AS 23.30.135 is amended to read:

25 **Sec. 23.30.135. Procedure before the division [BOARD].** (a) The director
26 in [IN] making a decision on an investigation or inquiry or conducting a hearing,
27 [THE BOARD] is not bound by common law or statutory rules of evidence or by
28 technical or formal rules of procedure, except as provided by this chapter. The
29 director [BOARD] may make an [ITS] investigation or inquiry or conduct a [ITS]
30 hearing in the manner that [BY WHICH IT] may best ascertain the rights of the
31 parties. For purposes of investigation under AS 23.30.011, 23.30.040, 23.30.075,

1 23.30.080, 23.30.085, 23.30.090, 23.30.140, 23.30.155(i), 23.30.155(k),
2 23.30.155(m), 23.30.170, and 23.30.240, the director may subpoena witnesses,
3 administer or cause to be administered oaths, and may examine or cause to be
4 examined books, papers and records relating to the questions under
5 investigation. The superior court shall enforce the subpoenas on application by
6 the director in the manner provided in AS 44.62.590. Declarations of a deceased
7 employee concerning the injury with [IN] respect to which the investigation or inquiry
8 is being made or the hearing conducted shall be received in evidence and are, if
9 corroborated by other evidence, sufficient to establish the injury.

10 (b) All testimony given during a hearing before the director [BOARD] shall
11 be recorded, but need not be transcribed unless further review is initiated. Hearings
12 before the director [BOARD] shall be open to the public.

13 * **Sec. 67.** AS 23.30.140 is amended to read:

14 **Sec. 23.30.140. Appointment of guardian by court.** The director
15 [BOARD] may require the appointment of a guardian or other representative by a
16 competent court for any person who is mentally incompetent or a minor to receive
17 compensation payable to the person under this chapter and to exercise the powers
18 granted to or to perform the duties required of the person under this chapter. If the
19 director [BOARD] does not require the appointment of a guardian to receive the
20 compensation of a minor, appointment for this purpose is not necessary.

21 * **Sec. 68.** AS 23.30.145(a) is amended to read:

22 (a) Fees for legal services rendered with [IN] respect to a claim are not valid
23 unless approved by the hearing panel [BOARD, AND THE FEES MAY NOT BE
24 LESS THAN 25 PER CENT ON THE FIRST \$1,000 OF COMPENSATION OR
25 PART OF THE FIRST \$1,000 OF COMPENSATION, AND 10 PER CENT OF ALL
26 SUMS IN EXCESS OF \$1,000 OF COMPENSATION]. When [THE BOARD
27 ADVISES THAT] a claim has been controverted, in whole or in part, [THE BOARD
28 MAY DIRECT THAT THE] fees for legal services may be paid by the employer or
29 carrier in addition to compensation awarded; the fees may be allowed only on the
30 amount of compensation controverted and awarded. When [THE BOARD ADVISES
31 THAT] a claim has not been controverted, but [FURTHER ADVISES THAT] bona

1 fide legal services have been rendered with [IN] respect to the claim, then the hearing
2 panel [BOARD] shall direct the payment of the fees out of the compensation awarded.
3 In determining the amount of fees the hearing panel [BOARD] shall take into
4 consideration the nature, length, and complexity of the services performed,
5 transportation charges, and the benefits resulting from the services to the
6 compensation beneficiaries.

7 * **Sec. 69.** AS 23.30.145(b) is amended to read:

8 (b) If an employer fails to file timely notice of controversy or fails to pay
9 compensation or medical and related benefits within 15 days after it becomes due or
10 otherwise resists the payment of compensation or medical and related benefits and if
11 the claimant has employed an attorney in the successful prosecution of the claim, a
12 hearing panel [THE BOARD] shall make an award to reimburse the claimant for the
13 costs in the proceedings, including [A] reasonable attorney fees [FEE]. The award is
14 in addition to the compensation or medical and related benefits ordered.

15 * **Sec. 70.** AS 23.30.155(a) is amended to read:

16 (a) Compensation under this chapter shall be paid periodically, promptly, and
17 directly to the person entitled to it, without an award, except where liability to pay
18 compensation is controverted by the employer. To controvert a claim, the employer
19 must file a notice, on a form prescribed by the director [BOARD], stating

- 20 (1) that the right of the employee to compensation is controverted;
21 (2) the name of the employee;
22 (3) the name of the employer;
23 (4) the date of the alleged injury or death; and
24 (5) the type of compensation and all grounds upon which the right to
25 compensation is controverted.

26 * **Sec. 71.** AS 23.30.155(b) is amended to read:

27 (b) The first installment of compensation becomes due on the 14th day after
28 the employer has knowledge of the injury or death. On this date all compensation then
29 due shall be paid. Subsequent compensation shall be paid in installments, every 14
30 days, except where a hearing panel [THE BOARD] determines that payment in
31 installments should be made monthly or at some other period.

1 * **Sec. 72.** AS 23.30.155(c) is amended to read:

2 (c) The insurer or adjuster shall notify the division [BOARD] and the
3 employee on a form prescribed by the director [BOARD] that the payment of
4 compensation has begun or has been increased, decreased, suspended, terminated,
5 resumed, or changed in type. An initial report shall be filed with the division
6 [BOARD] and sent to the employee within 28 days after the date of issuing the first
7 payment of compensation. If at any time 21 days or more pass and no compensation
8 payment is issued, a report notifying the division [BOARD] and the employee of the
9 termination or suspension of compensation shall be filed with the division [BOARD]
10 and sent to the employee within 28 days after the date the last compensation payment
11 was issued. A report shall also be filed with the division [BOARD] and sent to the
12 employee within 28 days after the date of issuing a payment increasing, decreasing,
13 resuming, or changing the type of compensation paid. If the division [BOARD] and
14 the employee are not notified within the 28 days prescribed by this subsection for
15 reporting, the insurer or adjuster shall pay a civil penalty of \$100 for the first day plus
16 \$10 for each day after the first day [THEREAFTER] that the notice was not given.
17 Total penalties under this subsection may not exceed \$1,000 for a failure to file a
18 required report. Penalties assessed under this subsection are eligible for reduction
19 under (m) of this section. A penalty assessed under this subsection after penalties
20 have been reduced under (m) of this section shall be increased by 25 percent and shall
21 bear interest at the rate established under AS 45.45.010.

22 * **Sec. 73.** AS 23.30.155(d) is amended to read:

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

1 who is party to the claim and who may be liable shall make the payments during the
2 pendency of the dispute. When a final determination of liability is made, any
3 reimbursement required, including interest at the statutory rate, and all costs and
4 attorney [ATTORNEYS'] fees incurred by the prevailing employer, shall be made
5 within 14 days after [OF] the determination.

6 * **Sec. 74.** AS 23.30.155(e) is amended to read:

7 (e) If any installment of compensation payable without an award is not paid
8 within seven days after it becomes due, as provided in (b) of this section, there shall be
9 added to the unpaid installment an amount equal to 25 percent of it. This additional
10 amount shall be paid at the same time as, and in addition to, the installment, unless
11 notice is filed under (d) of this section or unless the nonpayment is excused by a
12 hearing panel [THE BOARD] after a showing by the employer that, owing to
13 conditions over which the employer had no control, the installment could not be paid
14 within the period prescribed for the payment.

15 * **Sec. 75.** AS 23.30.155(f) is amended to read:

16 (f) If compensation payable under the terms of an award is not paid within 14
17 days after it becomes due, there shall be added to that unpaid compensation an amount
18 equal to 25 percent of it, which shall be paid at the same time as, but in addition to, the
19 compensation, unless review of the compensation order making the award is had as
20 provided in AS 23.30.125 and payment is stayed by an order of the commission
21 [INTERLOCUTORY INJUNCTION STAYING PAYMENTS IS ALLOWED BY
22 THE COURT].

23 * **Sec. 76.** AS 23.30.155(h) is amended to read:

24 (h) The director may initiate an investigation, have a medical examination
25 performed at the division's expense, or file a petition on a disputed matter for
26 hearing [BOARD MAY UPON ITS OWN INITIATIVE] at any time in a case in
27 which payments are being made with or without an award, where right to
28 compensation is controverted, or where payments of compensation have been
29 increased, reduced, terminated, changed, or suspended, upon receipt of notice from a
30 person entitled to compensation, or from the employer, that the right to compensation
31 is controverted, or that payments of compensation have been increased, reduced,

1 terminated, changed, or suspended. The director may then [, MAKE THE
2 INVESTIGATIONS, CAUSE THE MEDICAL EXAMINATIONS TO BE MADE,
3 OR HOLD THE HEARINGS, AND] take the further action considered necessary to
4 [WHICH IT CONSIDERS WILL] properly protect the rights of all parties.

5 * **Sec. 77.** AS 23.30.155(i) is amended to read:

6 (i) When the director [BOARD] considers it advisable, the director [IT] may
7 require an employer to make a deposit with the Department of Revenue to secure the
8 prompt and convenient payment of the compensation, and payments from the deposit
9 upon an award shall be made upon order of the director [BOARD].

10 * **Sec. 78.** AS 23.30.155(j) is amended to read:

11 (j) If an employer has made advance payments or overpayments of
12 compensation, the employer is entitled to be reimbursed by withholding up to 20
13 percent out of each unpaid installment or installments of compensation due. More
14 than 20 percent of unpaid installments of compensation due may be withheld from an
15 employee only on approval of a hearing panel [THE BOARD].

16 * **Sec. 79.** AS 23.30.155(k) is amended to read:

17 (k) An injured employee [,] or, in case of death, the employee's dependents or
18 personal representative [,] shall give receipts for payment of compensation to the
19 employer paying the compensation, [IT] and the employer shall produce the receipts
20 [THEM] for inspection by the director [BOARD], whenever required.

21 * **Sec. 80.** AS 23.30.155(m) is amended to read:

22 (m) On or before March 1 of each year, the insurer or adjuster shall file a
23 verified annual report on a form prescribed by the director [BOARD] stating the total
24 amount of all compensation by type, the number of claims received and the percentage
25 controverted, medical, and related benefits, vocational rehabilitation expenses, legal
26 fees, including a separate total of fees paid to attorneys and fees paid for the other
27 costs of litigation, and penalties paid on all claims during the preceding calendar year.
28 If the annual report is timely and complete when received by the division [BOARD]
29 and provides accurate information about each category of payments, the director
30 [COMMISSIONER] shall review the timeliness of the insurer's or adjuster's reports
31 filed during the preceding year under (c) of this section. If, during the preceding year,

1 the insurer or adjuster filed at least 99 percent of the reports on time, the penalties
2 assessed under (c) of this section shall be waived. If, during the preceding year, the
3 insurer or adjuster filed at least 97 percent of the reports on time, 75 percent of the
4 penalties assessed under (c) of this section shall be waived. If, during the preceding
5 year, the insurer or adjuster filed 95 percent of the reports on time, 50 percent of the
6 penalties assessed under (c) of this section shall be waived. If, during the preceding
7 year, the insurer's or adjuster's reports have not been filed on time at least 95 percent
8 of the time, none of the penalties assessed under (c) of this section shall be waived.
9 The penalties that are not waived are due and payable when the insurer or adjuster
10 receives notification from the director [COMMISSIONER] regarding the timeliness
11 of the reports. If the annual report is not filed by March 1 of each year, the insurer or
12 adjuster shall pay a civil penalty of \$100 for the first day the annual report is late [,]
13 and \$10 for each additional day the report is late. If the annual report is incomplete
14 when filed, the insurer or adjuster shall pay a civil penalty of \$1,000.

15 * **Sec. 81.** AS 23.30.155(o) is amended to read:

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

21 * **Sec. 82.** AS 23.30.170(a) is amended to read:

22 (a) In case of default by the employer in the payment of compensation due
23 under an award of compensation for a period of 30 days after the compensation is due,
24 the person to whom the compensation is payable may, within one year after the
25 default, file a petition with the division [APPLY TO THE BOARD MAKING THE
26 COMPENSATION ORDER] for a supplementary order declaring the amount of the
27 default. After completion of any investigation the director considers necessary,
28 and upon [,] notice [,] and hearing, as provided in AS 23.30.110, a hearing examiner
29 may [THE BOARD SHALL] make a supplementary order declaring the amount of the
30 default. The order shall be filed in the same manner as the compensation order.

31 * **Sec. 83.** AS 23.30.170(b) is amended to read:

1 (b) If the payment in default is an installment of the award, a hearing
2 examiner has [THE BOARD MAY, IN ITS] discretion to [,] declare the whole of the
3 award as the amount in default. The petitioner [APPLICANT] may file a certified
4 copy of the supplementary order with the clerk of the superior court. The
5 supplementary order is final. The court shall, upon the filing of the copy, enter
6 judgment for the amount declared in default by the supplementary order if it is in
7 accordance with law. Any time after a supplementary order is filed [BY THE
8 BOARD], the attorney general, when requested to do so by the director
9 [COMMISSIONER], shall take appropriate action to ensure [ASSURE] collection of
10 the defaulted payments.

11 * Sec. 84. AS 23.30.175(a) is amended to read:

12 (a) The weekly rate of compensation for disability or death may not exceed
13 the maximum compensation rate, may not be less than 22 percent of the maximum
14 compensation rate, and initially may not be less than \$110. However, if a hearing
15 panel [THE BOARD] determines that the employee's spendable weekly wages are
16 less than \$110 a week as computed under AS 23.30.220, or less than 22 percent of the
17 maximum compensation rate a week in the case of an employee who has furnished
18 documentary proof of the employee's wages, it shall issue an order adjusting the
19 weekly rate of compensation to a rate equal to the employee's spendable weekly
20 wages. If the employer can verify that the employee's spendable weekly wages are
21 less than 22 percent of the maximum compensation rate, the employer may adjust the
22 weekly rate of compensation to a rate equal to the employee's spendable weekly wages
23 without an order of a hearing panel [THE BOARD]. If the employee's spendable
24 weekly wages are greater than 22 percent of the maximum compensation rate, but 80
25 percent of the employee's spendable weekly wages is less than 22 percent of the
26 maximum compensation rate, the employee's weekly rate of compensation shall be 22
27 percent of the maximum compensation rate. Prior payments made in excess of the
28 adjusted rate shall be deducted from the unpaid compensation in the manner a hearing
29 panel [THE BOARD] determines. In any case, the employer shall pay timely
30 compensation. In this subsection, "maximum compensation rate" means 120 percent
31 of the average weekly wage, calculated under (d) of this section, applicable on the date

1 of injury of the employee.

2 * **Sec. 85.** AS 23.30.175(b) is amended to read:

3 (b) The following rules apply to benefits payable to recipients not residing in
4 the state at the time compensation benefits are payable:

5 (1) the weekly rate of compensation shall be calculated by multiplying
6 the recipient's weekly compensation rate calculated under AS 23.30.180, 23.30.185,
7 23.30.190, 23.30.200, or 23.30.215 [,] by the ratio of the cost of living of the area in
8 which the recipient resides to the cost of living in this state;

9 (2) the calculation required by (1) of this subsection does not apply if
10 the recipient is absent from the state for medical or rehabilitation services not
11 reasonably available in the state;

12 (3) if the gross weekly earnings of the recipient and the resulting
13 compensation rate are determined under AS 23.30.220(a)(6), (7), or (10), the
14 calculation required by this subsection applies only to the portion of the recipient's
15 weekly compensation rate attributable to wages earned in the state;

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

18 **(5) application of (1) - (4) of this subsection may not result in**
19 **raising a recipient's weekly compensation rate to an amount that exceeds the**
20 **weekly compensation rate that the recipient would have received if the recipient**
21 **had been residing in the state.**

22 * **Sec. 86.** AS 23.30.175(c) is amended to read:

23 (c) The **department** [BOARD] shall provide by regulation for the
24 determination and comparison of living costs for this state and the other areas in which
25 recipients reside and for the annual redetermination and comparison of these costs.

26 * **Sec. 87.** AS 23.30.180(a) is amended to read:

27 (a) In case of total disability adjudged to be permanent, 80 percent of the
28 injured employee's spendable weekly wages shall be paid to the employee during the
29 continuance of the total disability. If a permanent partial disability award has been
30 made before a permanent total disability determination, permanent total disability
31 benefits must be reduced by the amount of the permanent partial disability award,

1 adjusted for inflation, in a manner determined by a hearing panel [THE BOARD].
2 Loss of both hands, [OR] both arms, [OR] both feet, [OR] both legs, or both eyes, or
3 of any two of them, in the absence of conclusive proof to the contrary, constitutes
4 permanent total disability. In all other cases, permanent total disability is determined
5 in accordance with the facts. In making this determination the market for the
6 employee's services shall be the

- 7 (1) area of residence;
- 8 (2) area of last employment;
- 9 (3) [THE] state of residence; and
- 10 (4) [THE] State of Alaska.

11 * **Sec. 88.** AS 23.30.190(b) is amended to read:

12 (b) All determinations of the existence and degree of permanent impairment
13 shall be made strictly and solely under the whole person determination as set out in the
14 American Medical Association Guides to the Evaluation of Permanent Impairment,
15 except that an impairment rating may not be rounded to the next five percent. The
16 department [BOARD] shall adopt a supplementary recognized schedule for injuries
17 that cannot be rated by use of the American Medical Association Guides.

18 * **Sec. 89.** AS 23.30.190(d) is amended to read:

19 (d) When a new edition of the American Medical Association Guides
20 described in (b) of this section is published, the director [BOARD] shall, not later
21 than 90 days after the last day of the month in which the new edition is published, hold
22 an open meeting under AS 44.62.310 to select the date on which the new edition will
23 be used to make all determinations required under (b) of this section. The date selected
24 by the director [BOARD] for using the new edition may not be later than 90 days
25 after the last day of the month in which the new edition is published. After the
26 meeting, the director [BOARD] shall issue a public notice announcing the date
27 selected. The requirements of AS 44.62.010 - 44.62.300 do not apply to the selection
28 or announcement of the date under this subsection.

29 * **Sec. 90.** AS 23.30.200(b) is amended to read:

30 (b) The wage-earning capacity of an injured employee is determined by the
31 actual spendable weekly wage of the employee if the actual spendable weekly wage

1 fairly and reasonably represents the wage-earning capacity of the employee. A
2 hearing panel [THE BOARD] may, in the interest of justice, fix the wage-earning
3 capacity that is reasonable, having due regard for [TO] the nature of the injury, the
4 degree of physical impairment, the usual employment, and other factors or
5 circumstances in the case that may affect the capacity of the employee to earn wages
6 in a disabled condition, including the effect of disability as it may naturally extend into
7 the future.

8 * **Sec. 91.** AS 23.30.205(e) is amended to read:

9 (e) The second injury fund may not be bound as to any question of law or fact
10 by reason of an award or an adjudication to which it was not a party or in relation to
11 which the director [COMMISSIONER] was not notified at least three weeks before
12 the award or adjudication, that the fund might be subject to liability for the injury or
13 death.

14 * **Sec. 92.** AS 23.30.205(f) is amended to read:

15 (f) An employer or the employer's carrier shall notify the director
16 [COMMISSIONER OF LABOR AND WORKFORCE DEVELOPMENT] of any
17 possible claim against the second injury fund as soon as practicable, but in no event
18 later than 100 weeks after the employer or the employer's carrier have knowledge of
19 the injury or death.

20 * **Sec. 93.** AS 23.30.215(d) is amended to read:

21 (d) Compensation under this chapter to aliens not residents, or about to
22 become nonresidents, of the United States or Canada is the same in amount as
23 provided for residents, except that dependents in a foreign country are limited to
24 widow or widower and child or children, or, if there is no widow or widower and child
25 or children, to surviving father or mother whom the employee has supported, either
26 wholly or in part, for a period of one year before the date of injury. A hearing
27 examiner, upon petition of the director, the employer, or [THE BOARD, AT ITS
28 OPTION, OR UPON THE APPLICATION OF] the insurance carrier, may commute
29 all future installments of compensation to be paid to an alien dependent who is not a
30 resident of the United States or Canada by paying or causing to be paid to the alien
31 dependent one-half of the commuted amount of the future installments of

1 compensation as determined by the hearing examiner [BOARD].

2 * **Sec. 94.** AS 23.30.220(a) is amended to read:

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

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

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

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

14 (4) if, at the time of injury, the

15 (A) employee's earnings are calculated by the day, by the hour,
16 or by the output of the employee, the employee's gross weekly earnings are the
17 employee's earnings most favorable to the employee computed by dividing by
18 13 the employee's earnings, including overtime or premium pay, earned during
19 any period of 13 consecutive calendar weeks within the 52 weeks immediately
20 preceding the injury;

21 (B) employee has been employed for less than 13 calendar
22 weeks immediately preceding the injury, then, notwithstanding (1) - (3) of this
23 subsection and (A) of this paragraph, the employee's gross weekly earnings are
24 computed by determining the amount that the employee would have earned,
25 including overtime or premium pay, had the employee been employed by the
26 employer for 13 calendar weeks immediately preceding the injury and dividing
27 this sum by 13;

28 (5) if, at the time of injury, the employee's earnings have not been
29 fixed or cannot be ascertained, the employee's earnings for the purpose of calculating
30 compensation are the usual wage for similar services when the services are rendered
31 by paid employees;

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

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

8 (8) if an employee when injured is a minor, an apprentice, or a trainee
9 in a formal training program, as determined by a hearing panel [THE BOARD],
10 whose wages, under normal conditions, would increase during the period of disability,
11 the projected increase may be considered by the hearing panel [BOARD] in
12 computing the gross weekly earnings of the employee;

13 (9) if the employee is injured while performing duties as a volunteer
14 ambulance attendant, volunteer police officer, or volunteer fire fighter, then,
15 notwithstanding (1) - (6) of this subsection, the gross weekly earnings for calculating
16 compensation shall be the minimum gross weekly earnings paid a full-time ambulance
17 attendant, police officer, or fire fighter employed in the political subdivision where the
18 injury occurred, or, if the political subdivision has no full-time ambulance attendants,
19 police officers, or fire fighters, at a reasonable figure previously set by the political
20 subdivision to make this determination, but, in no case, may the gross weekly earnings
21 for calculating compensation be less than the minimum wage computed on the basis of
22 40 hours work a [PER] week;

23 (10) if an employee is entitled to compensation under AS 23.30.180
24 and a hearing panel [THE BOARD] determines that calculation of the employee's
25 gross weekly earnings under (1) - (7) of this subsection does not fairly reflect the
26 employee's earnings during the period of disability, the hearing panel [BOARD] shall
27 determine gross weekly earnings by considering the nature of the employee's work,
28 work history, and resulting disability, but compensation calculated under this
29 paragraph may not exceed the employee's gross weekly earnings at the time of injury.

30 * **Sec. 95.** AS 23.30.240 is amended to read:

31 **Sec. 23.30.240. Officers of corporations, municipal corporations, and**

1 **nonprofit corporations as employees.** An executive officer elected or appointed and
2 empowered in accordance with the charter and bylaws of a corporation, other than an
3 official of a municipal corporation or a charitable, religious, educational, or other
4 nonprofit corporation, is an employee of the corporation under this chapter. However,
5 an executive officer of a corporation may waive coverage under this chapter, subject
6 to the approval of the director [COMMISSIONER OF LABOR AND WORKFORCE
7 DEVELOPMENT], notwithstanding AS 23.30.245(b). Notwithstanding any other
8 provision of this chapter, an executive officer of a municipal corporation or of a
9 charitable, religious, educational, or other nonprofit corporation may be brought
10 within the coverage of its insurance contract by the corporation by specifically
11 including the officer in the contract of insurance. The election to bring an executive
12 officer within the coverage continues in force for the period the contract of insurance
13 is in effect. During that period, an executive officer brought within the coverage of
14 the insurance contract is an employee of the corporation under this chapter.

15 * **Sec. 96.** AS 23.30.250(b) is amended to read:

16 (b) If a hearing panel [THE BOARD], after a hearing, finds that a person has
17 obtained compensation, medical treatment, or another benefit provided under this
18 chapter by knowingly making a false or misleading statement or representation for the
19 purpose of obtaining that benefit, the hearing panel [BOARD] shall order that person
20 to make full reimbursement of the cost of all benefits obtained. Upon entry of an order
21 authorized under this subsection, the hearing panel [BOARD] shall also order that
22 person to pay all reasonable costs and attorney fees incurred by the employer and the
23 employer's carrier in obtaining an order under this section and in defending any claim
24 made for benefits under this chapter. If a person fails to comply with an order of a
25 hearing panel [THE BOARD] requiring reimbursement of compensation and
26 payment of costs and attorney fees, the employer may declare the person in default
27 and proceed to collect any sum due as provided under AS 23.30.170(b) and (c).

28 * **Sec. 97.** AS 23.30.260 is amended to read:

29 **Sec. 23.30.260. Penalty for receiving unapproved fees and soliciting.** A
30 person is guilty of a misdemeanor [,] and, upon conviction, is punishable for each
31 offense by a fine of not more than \$1,000 [,] or by imprisonment for not more than one

1 year, or by both, if the person

2 (1) receives a fee, other consideration, or a gratuity on account of any
3 services rendered for representation or advice with [IN] respect to a claim, unless
4 the consideration or gratuity is approved by the hearing panel, the commission,
5 [BOARD] or the court; or

6 (2) makes it a business to solicit employment for a lawyer or for the
7 person with [ONESELF IN] respect to a claim or award for compensation.

8 * **Sec. 98.** AS 23.30.260 is amended by adding a new subsection to read:

9 (b) Notwithstanding AS 23.30.145 and (a) of this section, approval of a fee is
10 not required if the fee does not exceed \$300 and is a one-time-only charge to an
11 employee by an attorney licensed in this state who performed legal services with
12 respect to the employee's claim but did not enter an appearance.

13 * **Sec. 99.** AS 23.30.395(3) is amended to read:

14 (3) "board" means the [ALASKA] Workers' Compensation Hearings
15 Board;

16 * **Sec. 100.** AS 23.30.395(28) is amended to read:

17 (28) "self-insurer" means an employer who, instead of insuring
18 liability under this chapter as it provides, elects to pay directly the compensation
19 provided for, and who has furnished to the division [BOARD] satisfactory proof of
20 the employer's financial ability to make the direct payments;

21 * **Sec. 101.** AS 23.30.395 is amended by adding new paragraphs to read:

22 (35) "commission" means the Workers' Compensation Appeals
23 Commission;

24 (36) "director" means the director of the division of workers'
25 compensation;

26 (37) "division" means the division of workers' compensation;

27 (38) "hearing examiner" means a hearing examiner employed under
28 AS 23.30.112 to preside over hearings of hearing panels in workers' compensation
29 claims and petitions and conduct other hearings under this chapter;

30 (39) "hearing panel" means a panel formed to hear workers'
31 compensation claims and petitions under this chapter, and that consists of a member of

1 the board representative of industry, a member of the board representative of labor,
2 and a hearing examiner employed under AS 23.30.112.

3 * **Sec. 102.** AS 39.25.120(c)(14) is amended to read:

4 (14) the rehabilitation administrator of the division of workers'
5 compensation [WORKERS' COMPENSATION BOARD];

6 * **Sec. 103.** AS 39.25.120(c) is amended by adding a new paragraph to read:

7 (20) the reemployment benefits administrator of the division of
8 workers' compensation in the Department of Labor and Workforce Development.

9 * **Sec. 104.** AS 39.50.200(b)(31) is amended to read:

10 (31) Workers' Compensation Appeals Commission (AS 23.30.007)
11 and Workers' Compensation Hearings Board (AS 23.30.006) [(AS 23.30.005)];

12 * **Sec. 105.** AS 44.62.330(a)(15) is amended to read:

13 (15) division of workers' compensation and its director [ALASKA
14 WORKERS' COMPENSATION BOARD], where procedures are not otherwise
15 expressly provided by AS 23.30 ([THE] Alaska Workers' Compensation Act);

16 * **Sec. 106.** AS 21.39.155(c) is repealed.

17 * **Sec. 107.** The uncodified law of the State of Alaska is amended by adding a new section
18 to read:

19 APPLICABILITY. The amendment to AS 23.30.175(b) made by sec. 85 of this Act
20 applies to an injury occurring on or after the effective date of sec. 85 of this Act.

21 * **Sec. 108.** The uncodified law of the State of Alaska is amended by adding a new section
22 to read:

23 TRANSITION: TERMS OF BOARD OF GOVERNORS MEMBERS. (a)
24 Notwithstanding sec. 5 of this Act, the director of insurance in the Department of Community
25 and Economic Development shall designate members of the board of governors for the Alaska
26 Insurance Guaranty Association to serve staggered initial terms in the manner provided in
27 AS 39.05.055.

28 (b) Terms of members of the board of governors for the Alaska Insurance Guaranty
29 Association serving on July 1, 2004, expire on July 2, 2004, but a member of the board of
30 governors on July 1, 2004, may continue to serve until a successor is appointed if the member
31 meets the standards set out in sec. 5 of this Act for the position in which the member was

1 serving on July 1, 2004. Members of the board of governors for the Alaska Insurance
2 Guaranty Association serving on July 1, 2004, may apply for reappointment to the board by
3 submitting a request to the director of insurance.

4 * **Sec. 109.** The uncodified law of the State of Alaska is amended by adding a new section
5 to read:

6 **TRANSITION: CONTINUANCE OF ALASKA WORKERS' COMPENSATION**
7 **BOARD; PENDING CASES.** (a) Notwithstanding the repeal and reenactment of
8 AS 23.30.005 by sec. 9 of this Act, the Alaska Workers' Compensation Board, established
9 under AS 23.30.005 as it existed on the day before the effective date of sec. 9 of this Act,
10 continues in existence for 45 days after the effective date of sec. 9 of this Act for the limited
11 purpose described in (b) of this section. Members serving on the Alaska Workers'
12 Compensation Board on the day before the effective date of sec. 9 of this Act continue to
13 serve as members of that board for the 45 days after the effective date of sec. 9 of this Act.
14 Appointments may not be made to that board on or after the effective date of sec. 9 of this
15 Act.

16 (b) A case heard by the board before the effective date of sec. 9 of this Act and
17 awaiting a decision by the board on the day before the effective date of sec. 9 of this Act shall
18 be decided by the board, and a decision or order shall be issued, not later than the 45th day
19 after the effective date of sec. 9 of this Act, under the applicable statutes and regulations in
20 effect on the day before the effective date of sec. 9 of this Act.

21 (c) In this section, "board" means the Alaska Workers' Compensation Board
22 established under AS 23.30.005 as that section existed on the day before the effective date of
23 sec. 9 of this Act.

24 * **Sec. 110.** The uncodified law of the State of Alaska is amended by adding a new section
25 to read:

26 **TRANSITION: INITIAL TERMS OF MEMBERS OF WORKERS'**
27 **COMPENSATION APPEALS COMMISSION AND THE WORKERS' COMPENSATION**
28 **HEARINGS BOARD.** (a) Notwithstanding AS 23.30.007(b), enacted by sec. 10 of this Act,
29 the terms of the initially appointed members of the Workers' Compensation Appeals
30 Commission, established by AS 23.30.007 as enacted by sec. 10 of this Act, shall be set by
31 the governor to achieve staggered terms in the manner provided in AS 39.05.055.

1 (b) Notwithstanding AS 23.30.006(a) and (b), enacted by sec. 10 of this Act, members
2 of the former Alaska Workers' Compensation Board whose terms have not expired as of the
3 effective date of this section become members of the Workers' Compensation Hearings
4 Board, established by AS 23.30.006 as enacted by sec. 10 of this Act, on the effective date of
5 this section, and may complete their original appointed terms as members of the Workers'
6 Compensation Hearings Board. Notwithstanding AS 23.30.006(b), enacted by sec. 10 of this
7 Act, the terms of the additional members initially appointed to the Workers' Compensation
8 Hearings Board shall be set by the governor so that approximately one-third of the members
9 serve terms of one year, one-third serve terms of two years, and one-third serve terms of three
10 years, taking into account the appointed terms of the members of the former Alaska Workers'
11 Compensation Board who became members of the Workers' Compensation Hearings Board
12 under this section.

13 * **Sec. 111.** The uncodified law of the State of Alaska is amended by adding a new section
14 to read:

15 TRANSITION: STAFF. (a) In order to ensure the smooth transfer of functions in the
16 shortest possible time, for a period of one year after the effective date of this section, the
17 director may, with the approval of the commissioner of labor and workforce development and
18 the chair of the commission, temporarily assign division employees to the commission and the
19 commission may reimburse the division for the temporarily assigned employees. Division
20 employees temporarily assigned to the commission shall continue in the same position and
21 rate of pay for the duration of the temporary assignment as the employees held at the division.

22 (b) Notwithstanding AS 23.30.112(a)(1), added by sec. 58 of this Act, a workers'
23 compensation hearing officer employed by the division on the day before the effective date of
24 sec. 58 of this Act who applies for and is otherwise eligible for employment as a hearing
25 examiner, is exempt for a period not exceeding 18 months after the effective date of sec. 58 of
26 this Act, from the requirement to be licensed to practice law in this state.

27 (c) In this section,

28 (1) "commission" means the Workers' Compensation Appeals Commission
29 established by AS 23.30.007, enacted by sec. 10 of this Act;

30 (2) "director" means the director of the division of workers' compensation in
31 the Department of Labor and Workforce Development;

1 (3) "division" means the division of workers' compensation in the Department
2 of Labor and Workforce Development.

3 * Sec. 112. The uncodified law of the State of Alaska is amended by adding a new section
4 to read:

5 TRANSITIONAL PROVISIONS. (a) Litigation, investigations, and other
6 proceedings pending under a law amended or repealed by this Act, or in connection with
7 functions transferred by this Act, continue in effect and may be continued and completed,
8 notwithstanding a transfer or amendment or repeal provided for in this Act.

9 (b) Certificates, decisions, and orders issued under authority of a law amended or
10 repealed by this Act remain in effect for the term issued, or until revoked, vacated, or
11 otherwise modified under the provisions of this Act. Contracts, rights, liabilities, and
12 obligations created by or under a law amended or repealed by this Act, and in effect on the
13 day before the effective date of this section, remain in effect notwithstanding this Act's taking
14 effect. Records, equipment, appropriations, and other property of agencies of the state whose
15 functions are transferred under this Act shall be transferred to implement the provisions of
16 this Act.

17 (c) Regulations adopted under AS 23.30 and in effect on the day before the effective
18 date of this Act continue in effect, and may be applied by the Alaska Workers' Compensation
19 Board, during the 45 days after the effective date of sec. 9 of this Act as provided in sec. 108
20 of this Act.

21 * Sec. 113. The uncodified law of the State of Alaska is amended by adding a new section
22 to read:

23 TRANSITION: REGULATIONS. (a) The Department of Labor and Workforce
24 Development and the director of insurance in the Department of Community and Economic
25 Development each may proceed to adopt regulations necessary to implement their respective
26 provisions of this Act. The regulations take effect under AS 44.62 (Administrative Procedure
27 Act), but not before the effective date of the statutory changes.

28 (b) In order to provide for the procedures and other administrative matters necessary
29 to ensure the on-going implementation of the state's workers' compensation laws to meet the
30 urgent needs of injured workers, and thus ensure the preservation of the public peace, health,
31 safety, or general welfare, the Workers' Compensation Appeals Commission established by

1 AS 23.30.007, enacted by sec. 10 of this Act, may adopt under AS 23.30.008, enacted by sec.
2 10 of this Act, as emergency regulations, the regulations necessary to implement the changes
3 made by this Act.

4 * **Sec. 114.** Section 113(a) of this Act takes effect immediately under AS 01.10.070(c).

5 * **Sec. 115.** Except as provided in sec. 114 of this Act, this Act takes effect July 1, 2004.

STATE OF ALASKA

MAR 10 2004

Frank H. Murkowski, Governor

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

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March 10, 2004

Senator Ralph Seekins
Chair, Senate Judiciary Committee
Alaska State Legislature
State Capitol, Room 125
Juneau, Alaska 99801

Re: SB 311 – “An Act providing for a special deposit for workers' compensation insurers; relating to the board of governors of the Alaska Insurance Guaranty Association; relating to covered workers' compensation claims paid by the Alaska Insurance Guaranty Association; stating the intent of the legislature, and setting out limitations, concerning the interpretation, construction, and implementation of workers' compensation laws; relating to restructuring the Alaska workers' compensation system; eliminating the Alaska Workers' Compensation Board; establishing a division of workers' compensation within the Department of Labor and Workforce Development and assigning certain Alaska Workers' Compensation Board functions to the division and the Department of Labor and Workforce Development; establishing a Workers' Compensation Appeals Commission; assigning certain functions of the Alaska Workers' Compensation Board to the Workers' Compensation Appeals Commission; relating to agreements that discharge workers' compensation liability; providing for hearing officers in workers' compensation proceedings; relating to workers' compensation awards; relating to an employer's failure to insure and keep insured or provide security; providing for appeals from compensation orders; relating to workers' compensation proceedings; providing for supreme court jurisdiction of appeals from the Workers' Compensation Appeals Commission; providing for a maximum amount for the cost-of-living adjustment for workers' compensation benefits; providing for administrative penalties for employers uninsured or without adequate security for workers' compensation; relating to assigned risk pools and insurers; and providing for an effective date.”

Dear Senator Seekins:

I am writing this letter to request that you schedule the above bill for a hearing at your earliest convenience.

Senator Ralph Seekins

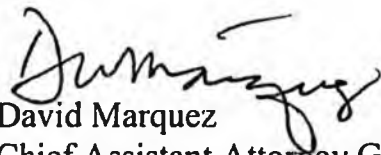
March 10, 2004

Re: SB 311

If you have any questions, please feel free to contact me.

Sincerely,

GREGG D. RENKES
ATTORNEY GENERAL

By: 
David Marquez
Chief Assistant Attorney General

DWM/lcc

cc: Mike Tibbles, Legislative Director, Office of the Governor
Deborah Behr, Legislation and Regulations Attorney, Department of Law

SB 311



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STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 6, 2004

The Honorable Gene Therriault
President of the Senate
Alaska State Legislature
State Capitol, Room 107
Juneau, AK 99801-1182

Dear President Therriault:

Under the authority of article III, section 18, of the Alaska Constitution, I am transmitting a bill relating to the workers' compensation system. This bill relieves employers and employees of the "administrative burden" present in our workers' compensation system. The current accumulation of rules, procedures, and appeal processes increases costs for employers and insurers, delays resolution of claims for employees, and makes the Alaska workers' compensation insurance market difficult for existing insurers and unattractive to new insurers. A recent Alaska Supreme Court case illustrates the problem. It took 1,400 days from filing of the claim to a decision by the Alaska Supreme Court in Bradbury v. Chugach Electric Assn., No. S-10532 (Alaska 6/20/2003). This is far too long to wait for resolution of a claim.

This bill reduces the administrative burden of the system by eliminating the present system of hearings and appeals. For years, there have been concerns that hearings before the Alaska Workers' Compensation Board (Board) are not accomplished quickly or consistently. The Legislature has been forced to take a number of steps, including: increasing the number of members of the Board; increasing the number of panels actually hearing cases (composed of one appointee representing labor, one appointee representing management, and a hearing officer); and increasing the number of hearing officers.

The current size of the Board with 14 members and the commissioner of the Department of Labor and Workforce Development far outstrips the single three-member Board originally created by the Legislature and makes assembly as a body (for purposes of meetings and approving regulations) difficult. While I recognize and appreciate the dedication, public service, and hard work the

The Honorable Gene Therriault

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Board members provide, many members lack even a general legal training and background, much less specialized knowledge of workers' compensation law.

Similarly, over the years the number of Board hearing panels have steadily increased in order to partially address concerns about their availability for frequent hearings. The unwanted side effect is a lack of consistency and predictability of decisions. Currently, there are more than 300 combinations of panel members and hearing officers deciding claims. On appeal, any one of the numbers of superior court judges assigned to hear workers' compensation appeals would rule on the relevant panel's decision. The losing party may then appeal to the Alaska Supreme Court as a matter of right and no deference is given to the Superior Court's decision. These sources of variation in the interpretation of the Alaska Workers' Compensation Act have multiplied in the last years, and have led to inconsistent, unpredictable rulings. There is no doubt. Alaska needs a consistent and predictable system for resolving disputed workers' compensation claims.

This bill replaces the old system with three new components, all of which will bring more predictability and consistency to the system: (1) a Workers' Compensation Appeals Commission (Commission); (2) experienced hearing officers; and (3) additional administrative authority and duties vested in the director of the division. In fact, the only change to benefits made in the entire bill is "capping" out-of-state claimants' benefits to the amount received by in-state claimants. Under current statutes, if a claimant resides out of state, the claimant's compensation rate would be adjusted upward or downward based on the cost of living where the claimant resides. The bill "caps" the cost-of-living adjustment for those claimants residing in a locality that has a higher cost of living than does Alaska. Under the bill, if a claimant resides in a higher cost-of-living locality, the claimant would receive the same benefits that the claimant would have received if the claimant resided in Alaska. Otherwise, no attempt is made to alter benefits available to injured workers or to disrupt the delivery of benefits.

The Commission replaces the Superior Court at the appellate level. The Commission would be composed of three attorneys who are members in good standing of the Alaska Bar Association. These individuals would have significant experience in Alaska workers' compensation law and their sole job would be to decide workers' compensation claims. The Commission will produce decisions that will be legal precedent until and unless overturned on appeal by the Alaska Supreme Court.

3B311

The Honorable Gene Therriault

February 6, 2004

Page 3

Initial hearings on disputed claims would be conducted by hearing officers. Hearing officers would be attorneys licensed to practice in Alaska with significant experience in workers' compensation law. These hearing officers would have the benefit of some minor procedural improvements designed to aid the parties in reaching a prompt adjudication of the claims. Costs currently associated with continuing to a hearing in cases that ought to be dismissed or summarily decided will be reduced. Consistency and predictability in the system will be improved. Costs and delays in resolving employees' claims are reduced without changing benefits available to injured workers.

This bill also brings new duties and accountability to the administration of the system by the department. Currently, the director has little authority to act since all power rests in the Board. This bill would establish a Division of Workers' Compensation in the department. The director, (appointed by the commissioner) would be personally accountable for the performance of the division. The director would have expanded authority to administer the second injury fund (AS 23.30.040), obtain stop-work orders, investigate uninsured employers, seek civil penalties for an employer's failure to insure workers, propose regulations to the commissioner, intervene in cases and file appeals, supervise rehabilitation of injured workers, and administer the Alaska Workers' Compensation Act. The director's formal decisions may be appealed to the Commission.

The bill also provides a powerful tool to further the department's current approach of "zero tolerance" for employers that fail to carry legally required workers' compensation liability insurance. Under this bill, the department gains authority to levy civil penalties against employers whose choice to operate without the required insurance coverage places their employee's financial and physical well-being at risk. They also gain an unfair competitive advantage over the employers who act responsibly by complying with the law and purchasing the necessary insurance.

The bill would also revise AS 21, the insurance code, regarding how the state regulates the insurance industry in the provision of workers' compensation insurance. Under the bill, insurers that transact workers' compensation insurance in this state would be required to maintain in the state a special deposit of cash or securities for the protection of persons in this state covered under workers' compensation insurance. This revision would provide additional financial protection for Alaskan workers in the event that workers' compensation insurer becomes insolvent and unable to pay claims.

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Page 4

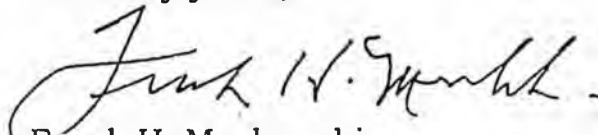
The composition of the Board of Governors of the Alaska Insurance Guaranty Association would be modified under the bill to include representatives from management, labor, and insurance licensees. This change would expand the expertise of the Board of Governors to better address workers' compensation issues. The bill provides transition provisions to allow for the initial appointment of members to meet the new statutory standards.

Finally, the bill would repeal AS 21.39.155(c), to ensure that the assigned risk pool for workers' compensation operates as a self-funded mechanism. Under existing law, the pool is not fully self-funded. This additional burden on insurance companies is a factor making the Alaska workers' compensation insurance market unattractive to insurers. Eliminating the cap on the assigned risk pool surcharge may improve the deposit of cash or securities for the protection of persons in this Alaska market for companies and ensure consumers have access to insurance coverage.

This bill represents a major step forward to addressing the significant workers' compensation crisis in Alaska. The bill would rationalize the process for making workers' compensation decisions in this state. This should make Alaska more attractive for businesses to remain here or to relocate their operations to this state.

I urge your prompt and favorable action on this measure.

Sincerely yours,



Frank H. Murkowski
Governor

Enclosure

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: SB 311
 (S) Publish Date: 2/09/04

Revision Date/Time (Note if correction): _____ Dept Affected: DCED
 Title Workers' Compensation Amendments RDU Insurance (116)
 Component Insurance
 Sponsor Rules
 Requester By Request of the Governor Component No. 354

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This legislation revises AS 21 regarding state regulation of the insurance code by strengthening protections for consumers and restructuring the Board of the Alaska Insurance Guaranty Association. It also eliminates the cap on the assigned risk pool surcharge.

This legislation has no fiscal impact on the operations of the division.

Prepared by: Linda S. Hall, Director Phone (907) 269-7900
 Division Insurance Date/Time 2/5/04 3:36 PM
 Approved by: Edgar Blatchford, Commissioner Date 2/5/2004
 Agency Department of Community & Economic Development

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: SB 311
(S) Publish Date: 2/09/04

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
Title: An Act relating to improvements in the RDU: Administration and Support
workers' compensation system Component: Legislation and Regulations
Sponsor: Rules
Requester: Governor Component No. _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill makes systemic improvements in the delivery of workers' compensation benefits and enforcement of workers' compensation insurance requirements. The bill improves the system adjudication of dispute.

Passage of this legislation would have no foreseeable fiscal impact on the Department of Law. In fact, the Department of Law believes that the systemic changes to the workers' compensation system will result in reduced claim administration costs over time.

Prepared by: Kathryn A. Daughetee, Director Phone 465-3673
Division: Administrative Services Date/Time 1/29/04 2:07 PM
Approved by: Kathryn Daughetee for Gregg D. Renkes, Attorney General Date 1/29/2004
Agency: Department of Law

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 3
Bill Version: SB 311
(S) Publish Date: 2/09/04

Revision Date/Time (Note if correction): _____ Department: Labor and Workforce Development
Title: An Act...establishing a Workers' Compensation Appeals Commission RDU: Work Comp Appeals Comm (new)
Sponsor: Rules Committee Component: Workers' Compensation Appeals Commission (new)
Requester: Governor Component Number: new#

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	380.1	380.1	380.1	380.1	380.1	380.1
Travel	(20.6)	(20.6)	(20.6)	(20.6)	(20.6)	(20.6)
Contractual	168.4	95.3	95.3	95.3	95.3	95.3
Supplies	14.4	14.4	14.4	14.4	14.4	14.4
Equipment	24.3	24.3	24.3	24.3	24.3	24.3
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	566.6	493.5	493.5	493.5	493.5	493.5

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES (1157)	18.0	18.0	18.0	18.0	18.0	18.0
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1157 Workers Safety Account	566.6	493.5	493.5	493.5	493.5	493.5
TOTAL	566.6	493.5	493.5	493.5	493.5	493.5

Estimate of any current year (FY2004) cost: None

Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time	4	4	4	4	4	4
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

See attached.

Prepared by: Paul Lisankie, Director
Division: Workers' Compensation Division
Approved by: Greg O'Claray, Commissioner
Agency: Department of Labor and Workforce Development

Phone 465-2790
Date/Time 2/6/04 9:37 AM
Date 2/6/2004

FISCAL NOTE #3

STATE OF ALASKA
2004 LEGISLATIVE SESSION

BILL VERSION: SB 311

ANALYSIS: (continued)

This legislation establishes a Workers' Compensation Commission, eliminates the Workers' Compensation Board, and transfers a number of functions from the Division of Workers' Compensation and the former Workers' Compensation Board to the new commission. The fiscal note displays the net change in costs associated with these changes. Changes include:

	Existing WC Division	New WC Appeals	Net Change
Personal Services	(803.8)	1,183.9	380.1
Travel	(36.8)	16.2	(20.6)
Contractual	(88.9)	257.3	168.4
Supplies	(8.6)	23.0	14.4
Equipment		24.3	24.3
Total	(938.1)	1,504.7	566.6

New Workers' Compensation Appeals Commission budget component:

Operating Expenditures:

Personal Services: The Appeals Commission is comprised of 13 new positions:

	<u>Range</u>
Commission, Chair	30 F
Commission, Member	29 C
Commission, Member	29 C
Comm. Hearing Officer	24 D
Comm. Hearing Officer	24 D
Comm. Hearing Officer	24 D
Comm. Hearing Officer	24 C
Comm. Hearing Officer	24 C
Comm. Hearing Officer	24 C
Admin. Services Mgr./ Commission Clerk	23 A
Admin. Assistant	13 A/B
Admin. Clerk III	10 A/B
Admin. Clerk II	8 A/B

The personal services costs of \$1,183.9 are associated with the above positions. Steps for Appeals Commission Hearing Officers are assumed to cover the range of experience of the potential incumbents mandated by the bill.

A reduction in the total numbers of hearing officers (currently eight authorized Workers' Compensation Hearing Officers versus planned six Appeals Commission Hearing Officers) is based upon a reasonably expected increase in productivity. That increase would result from 1) the increased experience and qualifications justifying Range 24 pay and 2) a lessening of turnover associated with upgrading the positions. Also, a reduction is supported by one substantive change in the bill that removes the need for a hearing officer to review Compromise & Release agreements involving injured workers represented by an attorney licensed to practice in the State of Alaska.

In order to insure that there is someone available to assist the chair in diverse "court clerk," budget/fiscal, and organizational administration functions (while still keeping total staffing requirements low) a higher level administrative manager position is included. In the state personnel system an Administrative Services Manager is identified as a "principal assistant to a division director" for managing administrative functions while insuring financial integrity and mission accomplishment.

FISCAL NOTE #3

STATE OF ALASKA
2004 LEGISLATIVE SESSION

BILL VERSION: SB 311

ANALYSIS: (continued)

Travel: Travel costs of \$16.2 have been minimized by basing the Appeals Commission and holding all its appeals hearings in Anchorage. Commission administrative staff are also located in Anchorage. Five Appeals Commission Hearing Officers are based in Anchorage and one in Fairbanks. Planned travel includes 3 trips to Juneau for the Commission chair and Commission Clerk/Administrative Services Manager as well as Hearing Officer travel once per month to Juneau for hearings, and Hearing Officer travel once every two months to Fairbanks to back up/fill in for resident.

Contractual: The bill requires that Appeals Commission offices and staff be "physically separate" from the Workers' Compensation Division offices and staff. The contractual budget of \$257.3 includes on-going contractual costs (telephones, leases, equipment maintenance, etc.) of \$184.2 and one-time costs of achieving the mandated physical separation of \$52.5 in Anchorage and \$20.6 in Fairbanks for a total of \$73.1. Those costs include demolition, construction, staff relocation, and voice and data line wiring.

Supplies and Equipment: A budget of \$23.0 for general office supplies and \$24.3 for equipment is necessary to operate the Appeals Commission.

New Fees/Fines:

The bill authorizes the Appeals Commission to charge a \$100.00 fee for the filing of an appeal. This is expected to amount to a yearly total of approximately \$6,000.00 payable to the Workers' Safety Account.

The bill also allows the Appeals Commission to order the parties to an appeal to pay for its costs of preparing the appeal file. At \$200.00 per appeal that could be expected to total \$12,000.00 per year payable to the Workers' Safety Account.

The bill also authorizes the Division of Workers' Compensation to seek the imposition of civil penalties against employers that violate the statutory requirement to insure or properly self-insure for their employees' workers' compensation benefits. Appeals Commission hearing officers would be authorized to award penalties up to a maximum of \$100.00 per day per employee. Based upon FY 2003 statistics penalties totaling \$217,900.00 could have been assessed for each day the 189 identified, uninsured employers failed to insure the workers' compensation benefits of their 2,179 employees. It is unclear whether these penalties under AS 23.30.080 were intended to be considered as penalties under "this section" (AS 23.05.067). Due to the speculative nature of these penalties, and the uncertainty of their collectability and qualification for inclusion, no adjustment to the Workers' Safety Account is currently included.

Existing Workers' Compensation budget component:

Operating Expenditures:

Personal Services: The Workers' Compensation Division and the Workers' Compensation Board would delete the following positions:

	Range
Chief of Adjudication	23 B
Workers' Compensation Hearing Officer	21 M
Workers' Compensation Hearing Officer	21 K
Workers' Compensation Hearing Officer	21 F
Workers' Compensation Hearing Officer	21 B/C
Workers' Compensation Hearing Officer	21 B/C
Workers' Compensation Hearing Officer	21 B/C
Workers' Compensation Hearing Officer	21 A
Workers' Compensation Officer II	18 K
14 Workers' Compensation Board Members	-----

FISCAL NOTE #3

STATE OF ALASKA
2004 LEGISLATIVE SESSION

BILL VERSION: SB 311

ANALYSIS: (continued)

The personal services cost reductions of (\$803.8) are associated with the 9 full-time positions above. Savings from Board members are reflected below under travel and stipends.

Many responsibilities previously lodged in the AWCB have been reassigned to the Division Director. While some will be absorbed by the remaining Workers' Compensation Officers, others require more advanced legal and administrative hearing skills. Reflecting the increased responsibilities the bill places upon the Division Director, and the loss of the Chief of Adjudication, the Division will retain one Workers' Compensation Hearing Officer or equivalent (Range 21) position. This position will allow the Director to delegate some of the duties for making investigations and determinations to the incumbent.

The bill shifts to the Appeals Commission Hearing Officers the requirement to hold prehearing conferences needed for planning hearings and to resolve discovery disputes. In Anchorage, where there are currently three WCO II's and two technicians, this reduction and shifting other work will require one less Workers' Compensation Officer II.

Travel: Travel costs are reduced by (\$36.8) to reflect transfer of hearing officer travel to the Appeals Commission and the absence of Board member stipends (\$50.00 per day) and travel.

Contractual and Supplies: Reflects reductions in fixed costs, space lease in Anchorage and Fairbanks, and other contractual costs totaling (\$88.9). And also reflects transferring (\$8.6) for supplies to the Appeals Commission.

Funding

Funding for the net cost increase resulting from this legislation will be from Workers' Safety Account reserves. This assumes passage of legislation to reverse the sweep of the reserve balance. Failure to reverse the sweep will force a reliance on General Funds for these costs as all recurring Workers Safety Account revenue is accounted for in the Governor's FY 2005 budget.

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 4
 Bill Version: SB 311
 (S) Publish Date: 3/5/04

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
 Title An act reforming Workers' Compensation Board functions RDU Risk Management
 Component Risk Management
 Sponsor Rules
 Requester By request of the Governor Component No. 71

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type-Do not abbreviate)						
TOTAL

Estimate of any current year (FY2004) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*
 Significant reform to the adjudication process for workers' compensation claims is proposed in this comprehensive legislation.
 In time, these streamlining measures are projected to save allocated loss adjustment expenses presently incurred in resolving disputes in claim and benefit obligations.
 As an authorized self-insured employer, the state will experience these savings in its self-insurance program administered by Risk Management.
 In future years, Risk Management's workers' compensation premium assessments to state agencies will reflect the reductions actually realized as premium charges are developed from actual claims expense incurred.

Prepared by: J. Brad Thompson, Director Phone 465-5723
 Division Director Date/Time 2/9/04 9:15 AM
 Approved by: Mike Miller, Commissioner Date 2/9/2004
 Agency Department of Administration

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 5
Bill Version: SB 311
(S) Publish Date: 3/5/04

Revision Date/Time (Note if correction): _____ Dept. Affected: _____
Title Workers' Compensation BRU Alaska Court System
Component Appellate Courts
Sponsor Senate Rules
Requester Governor Component No. _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	186.1	186.1	186.1	186.1	186.1	186.1
Travel						
Contractual	2.4	2.4	2.4	2.4	2.4	2.4
Supplies						
Equipment	10.3					
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	198.8	188.5	188.5	188.5	188.5	188.5

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	198.8	188.5	188.5	188.5	188.5	188.5
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	198.8	188.5	188.5	188.5	188.5	188.5

Estimate of any current year (FY2004) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time	3					
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

See attached analysis.

Prepared by: Doug Wooliver Administrative Attorney Phone 463-4750
Division Alaska Court System Date/Time 2/9/04 11:37 AM
Approved by: Stephanie Cole Administrative Director by Doug Wooliver Date 2/9/2004
Agency Alaska Court System

SB 311 FN #5
Alaska Court System Fiscal Analysis

Senate Bill 311 makes several changes to the way the Department of Labor and Workforce Development (the agency) and the Alaska Court System resolve workers' compensation disputes and appeals. Most important for purposes of the court's fiscal note is that appeals from the newly-created Workers' Compensation Appeals Commission (commission) will bypass the superior court and go directly to the supreme court.

The court system does not believe that the creation of the new commission will result in a decrease in the number of workers' compensation cases that are appealed to the court system each year. However, bypassing the superior court will lead to a significant increase in the number of these appeals that go to the supreme court. This is because the superior court resolves about 75% of the workers' compensation cases appealed to the court system. Of the yearly average of 36 appeals filed with the superior court, only 9 (25%) are further appealed to the supreme court. Because the bill bypasses the superior court the supreme court anticipates that it will see all 36 cases.

Although the removal of these cases from the superior court will ease the workload of that court, the reduction is only slightly more than an average of one case a year per judge.¹ Although this will allow judges some additional time to focus on other cases, it is not a significant enough reduction to produce a cost savings. However, an additional 27 cases a year for the supreme court would represent a greater than 10% increase in its civil caseload.

In order to mitigate the impact of these additional cases the court will hire a central staff attorney with expertise in workers' compensation law to research the record and the legal issues associated with each of the workers' compensation cases. This assistance should reduce the time required to resolve these cases and lessen the impact they will have on other matters before the court.

Additionally, this note reflects the costs of an administrative assistant to assist the attorney and an additional clerical position to handle the increased paper work and to interact with the agency in the preparation of the records on appeal.

This note conservatively assumes that the number of cases appealed to the court system will not grow above the current average of 36 cases a year. Should that average increase the court system may be back before the legislature with a request for additional funding.

¹ By way of comparison, the statewide average of cases per superior court judge is 500 to 600 cases a year.

**CS FOR SENATE BILL NO. 311(JUD)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - SECOND SESSION**

BY THE SENATE JUDICIARY COMMITTEE

Introduced:

Referred:

Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 "An Act providing for a special deposit for workers' compensation insurers; relating to
2 the board of governors of the Alaska Insurance Guaranty Association; stating the intent
3 of the legislature, and setting out limitations, concerning the interpretation,
4 construction, and implementation of workers' compensation laws; relating to
5 restructuring the Alaska workers' compensation system; eliminating the Alaska
6 Workers' Compensation Board; establishing a division of workers' compensation within
7 the Department of Labor and Workforce Development and assigning certain Alaska
8 Workers' Compensation Board functions to the division and the Department of Labor
9 and Workforce Development; establishing a Workers' Compensation Appeals
10 Commission and a Workers' Compensation Hearings Board; assigning certain functions
11 of the Alaska Workers' Compensation Board to the Workers' Compensation Appeals
12 Commission and the Workers' Compensation Hearings Board; relating to agreements

1 that discharge workers' compensation liability; providing for hearing examiners and
2 hearing panels in workers' compensation proceedings; relating to workers'
3 compensation awards; relating to an employer's failure to insure and keep insured or
4 provide security; providing for appeals from compensation orders; relating to workers'
5 compensation proceedings; providing for supreme court jurisdiction of appeals from the
6 Workers' Compensation Appeals Commission; providing for a maximum amount for
7 the cost-of-living adjustment for workers' compensation benefits; providing for
8 administrative penalties for employers uninsured or without adequate security for
9 workers' compensation; relating to assigned risk pools and insurers; and providing for
10 an effective date."

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

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

14 **LEGISLATIVE INTENT.** It is the intent of the legislature by secs. 3 - 6 of this Act

15 (1) to reform the workers' compensation system in Alaska to ensure the
16 continued payment of benefits in the event of an insurer insolvency;

17 (2) to give parties affected by the insolvency of a workers' compensation
18 insurer a voice on the board of governors of the Alaska Insurance Guaranty Association; and

19 (3) to reduce the overall costs of workers' compensation premiums to
20 employers.

21 * **Sec. 2.** AS 08.18.101(1) is amended to read:

22 (1) to the extent required under AS 23.30, workers' compensation
23 insurance that is purchased from a private insurer who is admitted to do business in the
24 state and that shows coverage in this state, appropriate employee classifications, and
25 rates applicable in this state, or a valid workers' compensation self-insurance
26 certificate issued by the director of the division of workers' compensation
27 [ALASKA WORKERS' COMPENSATION BOARD]; and

1 * Sec. 3. AS 21.09.090 is amended by adding a new subsection to read:

2 (e) In addition to any other deposit required under this section, an insurer who
3 transacts workers' compensation insurance in this state shall maintain in the state a
4 special deposit of cash or securities eligible for deposit under AS 21.24.030 in an
5 amount not less than the basic capital or surplus required of an insurer under
6 AS 21.09.070 for the protection of persons in this state covered under workers'
7 compensation insurance. The insurer shall maintain the deposit under this subsection
8 in this state as long as there is any outstanding liability of the insurer for workers'
9 compensation in this state. If the insurer is unable to pay workers' compensation
10 claims due under AS 23.30 because the insurer is an insolvent insurer, upon the
11 director's request, the deposit is immediately available to the Alaska Insurance
12 Guaranty Association (AS 21.80) for continuation of claims benefits to eligible
13 workers. In this subsection, "insolvent insurer" has the meaning given in
14 AS 21.80.180.

15 * Sec. 4. AS 21.24.130(d) is amended to read:

16 (d) Except as provided in AS 21.09.090(e), if [IF] the insurer is subject to
17 delinquency proceedings as defined in AS 21.78, upon the order of a court of
18 competent jurisdiction, the director shall yield the assets and securities held on deposit
19 to the receiver, conservator, rehabilitator, or liquidator of the insurer, or to any other
20 properly designated official or officials who succeed to the management and control of
21 the insurer's assets.

22 * Sec. 5. AS 21.80.050 is repealed and reenacted to read:

23 **Sec. 21.80.050. Board of governors.** (a) The board of governors of the
24 association consists of nine members appointed by the director. Terms are established
25 in the plan of operation of the association. Membership of the board of governors
26 consists of

- 27 (1) four members who represent member insurers;
28 (2) two members who represent employers;
29 (3) two members who represent labor;
30 (4) one member who represents licensees.

31 (b) Members appointed shall serve staggered three-year terms and may be

1 removed for cause by the director.

2 (c) Within 90 days after a vacancy occurs on the board, the director shall fill
3 the vacancy for the remaining period of the term of the vacating member.

4 (d) In appointing a member insurer to the board, the director shall consider,
5 among other things, whether all member insurers are fairly represented.

6 (e) Members of the board may be reimbursed from the assets of the
7 association for expenses incurred by them as members of the board of governors.

8 * Sec. 6. AS 23.05.067(a) is amended to read:

9 (a) Each insurer providing workers' compensation insurance and each
10 employer who is self-insured or uninsured for purposes of AS 23.30 in this state shall
11 pay an annual service fee to the department for the administrative expenses of the state
12 for workers' safety programs under AS 18.60 and the workers' compensation program
13 under AS 23.30 as follows:

14 (1) for each employer,

15 (A) except as provided in (b) of this section, the service fee
16 shall be paid each year to the department at the time that the annual report is
17 required to be filed under AS 23.30.155(m) or (n); and

18 (B) the service fee is 2.9 percent of all payments reported to the
19 director of the division of workers' compensation [ALASKA WORKERS'
20 COMPENSATION BOARD] under AS 23.30.155(m) or (n), except second
21 injury fund payments; and

22 (2) for each insurer, the director of the division of insurance shall,
23 under (e) of this section, deposit from funds received from the insurer under
24 AS 21.09.210 a service fee of 1.82 percent of the direct premium income for workers'
25 compensation insurance received by the insurer during the year ending on the
26 preceding December 31, subject to all the deductions specified in AS 21.09.210(b).

27 * Sec. 7. AS 23.05.067(e) is amended to read:

28 (e) Annual service fees and civil penalties collected under this section and
29 fees collected by the Workers' Compensation Appeals Commission shall be
30 deposited in the workers' safety and compensation administration account in the state
31 treasury. Under AS 37.05.146(c), the Workers' Compensation Appeals Commission

1 fees, service fees, and civil penalties shall be accounted for separately, and
2 appropriations from the account are not made from the unrestricted general fund. The
3 legislature may appropriate money from the account for expenditures by the
4 department for necessary costs incurred by the department in the administration of the
5 workers' safety programs contained in AS 18.60 and of the Alaska Workers'
6 Compensation Act contained in AS 23.30. **The legislature may appropriate money**
7 **from the account for expenditures by the department for necessary costs**
8 **incurred by the Workers' Compensation Appeals Commission and for the**
9 **administration of adjudication of claims and petitions arising under AS 23.30.**

10 Nothing in this subsection creates a dedicated fund or dedicates the money in the
11 account for a specific purpose. Money deposited in the account does not lapse at the
12 end of a fiscal year unless otherwise provided by an appropriation.

13 * Sec. 8. AS 23.30 is amended by adding a new section to read:

14 **Sec. 23.30.001. Intent of the legislature and construction of chapter.** It is
15 the intent of the legislature that

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

19 (2) workers' compensation cases shall be decided on their merits
20 except where otherwise provided by law;

21 (3) this chapter may not be construed by the courts in favor of any
22 party;

23 (4) hearings in workers' compensation cases shall be impartial and fair
24 to all parties and all parties shall be afforded due process and an opportunity to be
25 heard and for their arguments and evidence to be fairly considered; and

26 (5) evidence shall be carefully and rationally examined; and, except in
27 the application of the presumption in AS 23.30.120(a), doubt as to the substance of
28 evidence may not be interpreted in favor of one party or the other.

29 * Sec. 9. AS 23.30.005 is repealed and reenacted to read:

30 **Sec. 23.30.005. Alaska workers' compensation division; duties of**
31 **department; regulations; notice of revocation of self-insurance. (a) There is**

1 established in the Department of Labor and Workforce Development a division of
2 workers' compensation. The commissioner shall appoint the director of the division.
3 The director shall have at least three years of experience in the field of workers'
4 compensation.

5 (b) The director is responsible to the commissioner for the execution of the
6 duties and responsibilities imposed by this chapter and the regulations adopted under
7 this chapter. The director shall

8 (1) direct and supervise the administrative, technical, investigative, and
9 enforcement activities of the division of workers' compensation;

10 (2) develop, in cooperation with others, programs for the improvement
11 of the workers' compensation system;

12 (3) prepare regulations, consistent with the responsibilities of the
13 division under this chapter, that are required to implement and administer this chapter
14 for adoption by the department;

15 (4) notify employees, employers, physicians, and rehabilitation
16 specialists of their rights and obligations under this chapter;

17 (5) perform other lawful acts necessary to carry out the purposes of
18 this chapter.

19 (c) The department shall adopt rules for the periodic selection, retention, and
20 removal of rehabilitation specialists and physicians under AS 23.30.041 and
21 23.30.095.

22 (d) The department may adopt regulations concerning the medical care
23 provided for in this chapter and, except as committed to the authority of the Workers'
24 Compensation Appeals Commission, may adopt regulations to carry out the provisions
25 of this chapter.

26 (e) The director shall notify the contracting agency of the state or of a political
27 subdivision of the state when it revokes the self-insurance certificate of an employer
28 holding a contract with the state or a political subdivision of the state.

29 * Sec. 10. AS 23.30 is amended by adding new sections to read:

30 **Sec. 23.30.006. Workers' Compensation Hearings Board.** (a) There is
31 established in the Department of Labor and Workforce Development a Workers'

1 Compensation Hearings Board. The board consists of 14 members. Seven members
2 shall be representative of labor; seven members shall be representative of industry.
3 Two members shall sit for the second and fourth judicial districts; two members shall
4 sit for the first judicial district; and 10 members shall sit for the third judicial district.
5 A member may serve in another district when necessary.

6 (b) Members of the board shall be appointed by the governor. Members shall
7 be citizens of the United States and a resident of this state for three years preceding
8 appointment. Members shall be appointed for a term of three years. The term of a
9 member sitting for a two-member district may not expire in the same year as the other
10 member of the same district. A vacancy arising in the board shall be filled by
11 appointment of the governor. Except as provided in AS 39.05.080(4), an appointee
12 selected to fill a vacancy shall hold office for the unexpired term of the member whose
13 vacancy is filled.

14 (c) Members are entitled to compensation in the amount of \$50 a day for each
15 day or portion of a day spent in actual hearing or on authorized official business
16 incidental to their duties and to transportation and per diem as provided by law.

17 (d) The chair of the commission shall serve as the administrative and
18 executive officer of the board and shall have authority in all administrative matters
19 relating to the members, including but not limited to the assignment and distribution of
20 cases and assignment of members to hearing panels.

21 (e) A member of the board may be removed from office by the governor for
22 good cause. A member of the board, to be removed for cause, shall be given a copy of
23 the charges and afforded an opportunity to be heard in person or by counsel in the
24 member's own defense upon not less than 10 days' notice. If the member is removed
25 for cause, the governor shall file with the lieutenant governor a complete statement of
26 all charges made against the member, the governor's findings on the charges, and the
27 record of any proceedings. In this subsection, "good cause" includes

- 28 (1) misconduct in office or violation of AS 39.52;
29 (2) conviction of a felony;
30 (3) conviction of a misdemeanor related to workers' compensation;
31 4) inability to serve, neglect of duty, incompetence, or unavailability to

1 perform the duties of his or her office.

2 (f) A member of the board may not hear a claim or petition under this chapter
3 if

4 (1) a party is an employee or was, in the past seven years, an employee
5 of the board member or of a business that employs the board member;

6 (2) a party is a member or was, in the past seven years, a member of
7 the same union or employee association as the board member;

8 (3) a party has a contractual relationship with the board member, a
9 business that employs the board member, or a union or employee association of which
10 the board member is a member;

11 (4) the member is unable to be fair, impartial, and unbiased toward the
12 hearing participants; or

13 (5) participation in the hearing is a violation of AS 39.52.

14 (g) For purposes of holding hearings under this chapter, the members of the
15 board shall sit in panels of three members. Each panel must include a board member
16 representative of labor, a board member representative of industry, and a hearing
17 examiner employed under AS 23.30.112. A hearing may not proceed in the absence
18 of a board member.

19 **Sec. 23.30.007. Workers' Compensation Appeals Commission.** (a) There
20 is established in the Department of Labor and Workforce Development a Workers'
21 Compensation Appeals Commission. The commission has jurisdiction to hear appeals
22 from decisions and orders of hearing examiners, hearing panels, and the director.
23 Jurisdiction of the commission is limited to administrative appeals arising under this
24 chapter.

25 (b) The commission consists of three members appointed by the governor and
26 confirmed by a majority of the members of the legislature in joint session. Members
27 shall be appointed for a term of five years. At least one member shall be an individual
28 who, on account of the individual's previous employment, practice, or affiliations, can
29 be classed as a representative of employers and at least one shall be an individual who,
30 on account of the individual's previous employment, practice, or affiliations, can be
31 classed as a representative of employees. A member may act and receive

1 compensation from the date of appointment until confirmation or rejection by the
2 legislature.

3 (c) A member of the commission shall, at the time of appointment,

4 (1) be a citizen of the United States, a resident of this state for five
5 years preceding appointment, licensed to practice law in this state, and a member in
6 good standing of the Alaska Bar Association; and

7 (2) have been in the active practice of law for least five years with
8 experience of workers' compensation law in this state.

9 (d) The governor shall appoint one member of the commission to serve as
10 chair of the commission. The chair of the commission shall serve a term of three years
11 or the remainder of his or her term as a member of the commission if less than three
12 years remains of the unexpired term as a member, unless he or she is appointed to a
13 successive term as a member of the commission before the expiration of his or her
14 term as a member of the commission. A member of the commission may not be
15 appointed for successive terms as chair of the commission.

16 (e) A vacancy arising in the commission shall be filled by appointment of the
17 governor and confirmed by a majority of the members of the legislature in joint
18 session. Except as provided in AS 39.05.080(4), an appointee selected to fill a
19 vacancy shall hold office for the unexpired term of the member whose vacancy is
20 filled. A vacancy in the commission does not impair the authority of a quorum of
21 members to exercise all the powers and perform all the duties of the commission. A
22 majority of the members of the commission constitutes a quorum.

23 (f) A member of the commission may be removed from office by the governor
24 for good cause. A member of the commission, to be removed for cause, shall be given
25 a copy of the charges and afforded an opportunity to be heard in person or by counsel
26 in the member's own defense upon not less than 10 days' notice. If the member is
27 removed for cause, the governor shall file with the lieutenant governor a complete
28 statement of all charges made against the member, the governor's findings on the
29 charges, and the record of any proceedings. In this subsection, "good cause" includes

30 (1) misconduct in office or violation of AS 39.52;

31 (2) conviction of a felony;

1 (3) conviction of a misdemeanor related to workers' compensation;

2 (4) inability to serve, neglect of duty, incompetence, unjustified failure
3 to handle the caseload assigned, or similar nonfeasance of office; and

4 (5) failure to meet the requirements of this section relating to
5 qualification for office.

6 (g) The monthly base salary for a member of the commission shall be equal to
7 Step C, Range 29, of the salary schedule in AS 39.27.011(a) for Juneau, Alaska. The
8 chair of the commission shall receive a monthly salary equal to Step F, Range 30 of
9 the salary schedule in AS 39.27.011(a) for Juneau, Alaska. Members of the
10 commission are in the exempt service under AS 39.25.110.

11 (h) Each member of the commission, before entering upon the duties of office,
12 shall take and subscribe to the oath prescribed for principal officers of the state.

13 (i) The office and staff of the commission shall be physically separate from
14 office and staff of the division.

15 **Sec. 23.30.008. Powers and duties of the commission.** (a) The commission
16 shall be the exclusive and final authority for the hearing and determination of all
17 questions of law and fact arising under this chapter in those matters that have been
18 appealed to the commission, except for an appeal to the Alaska Supreme Court. The
19 commission may not have jurisdiction in any case that does not arise under this
20 chapter or in any criminal case. On any matter taken to the commission, the decision
21 of the commission is final and conclusive, unless appealed to the Alaska Supreme
22 Court, and shall stand in lieu of the order of the director, the hearing panel, or the
23 hearing examiner from which the appeal was taken. Unless reversed by the Alaska
24 Supreme Court, decisions of the commission shall have the force of legal precedent.

25 (b) The commission, in its administrative capacity, shall maintain, index, and
26 make available for public inspection the final administrative decisions and orders of
27 the commission, the hearing panels, and hearing examiners. To promote consistency
28 among legal determinations, the chair of the commission may review and circulate
29 among the other members of the commission the drafts of the commission's formal
30 decisions and decisions upon reconsideration, and other legal opinions of the other
31 members of the commission. The drafts are confidential documents and are not

1 subject to disclosure.

2 (c) The commission, in its administrative capacity, may adopt regulations
3 implementing its authority and duties under this chapter, including rules of procedure
4 and evidence for proceedings before the commission, hearing panels, and hearing
5 examiners and in workers' compensation proceedings under AS 23.30.080, 23.30.090,
6 23.30.108, and 23.30.110, and for the adjudication of all claims and petitions and
7 appeals under this chapter. The provisions of AS 44.62 (Administrative Procedure
8 Act) apply to the adoption of regulations by the commission.

9 (d) The commission shall award a successful party reasonable costs and, if the
10 party is represented by an attorney, attorney fees that the commission determines to be
11 fully compensatory and reasonable. However, the commission may not make an
12 award of attorney fees against an injured worker unless the commission finds that the
13 worker's position on appeal was frivolous or unreasonable or the appeal was taken in
14 bad faith.

15 (e) The commission, in its administrative capacity, may adopt and alter an
16 official seal and do all things necessary, convenient, or desirable to carry out the
17 powers expressly granted or necessarily implied in this chapter.

18 **Sec. 23.30.009. Powers and duties of the chair of the commission.** (a) The
19 chair of the commission shall exercise general supervision of the office of the
20 commission, appeals, and workers' compensation hearings and direct the
21 administrative functions of the commission. The chair may

22 (1) employ and supervise commission staff and hearing examiners and
23 appoint a commission clerk;

24 (2) establish and implement a time management system for the
25 commission, staff, board, and hearing examiners and manage the calendar of hearings
26 and appeals;

27 (3) assign the work of the commission members, board members,
28 hearing examiners and staff so that hearings and appeals are resolved as expeditiously
29 and competently as possible, including designating hearing examiners to hear
30 preliminary matters; and

31 (4) prepare an annual budget of the commission and the board.

1 (b) The chair of the commission shall, not later than March 15 of each year,
2 make available to the public and file with the lieutenant governor, a report regarding
3 the commission and the board, including data regarding time periods between initial
4 receipt and final decisions on hearings and appeals.

5 * Sec. 11. AS 23.30.011(c) is amended to read:

6 (c) If an employee is entitled to the benefits of this chapter by reason of an
7 injury sustained in this state in employment by an employer who is domiciled in
8 another state and who has not secured the payment of compensation as required by
9 this chapter, the employer or the employer's carrier may file with the division
10 [BOARD] a certificate, issued by the commission or agency of the other state having
11 jurisdiction over workers' compensation claims, certifying that the employer has
12 secured the payment of compensation under the workers' compensation law of the
13 other state and that, with respect to that injury, the employee is entitled to the benefits
14 provided under that law. In that event,

15 (1) the filing of the certificate shall constitute an appointment by the
16 employer or the employer's carrier of the director [BOARD] as the employer's agent
17 for acceptance of the service of process in a proceeding brought by the employee or
18 the employee's dependents to enforce the employee's or their rights under this chapter
19 on account of the injury;

20 (2) the director [BOARD] shall send to the employer or carrier, by
21 registered or certified mail to the address shown on the certificate, a true copy of any
22 notice of claim or other process served on the director by the employee or the
23 employee's dependents in any proceeding brought to enforce the employee's or their
24 rights under this chapter;

25 (3) if the employer is a qualified self-insurer under the workers'
26 compensation law of the other state, the employer, upon submission of evidence
27 satisfactory to the director [BOARD] of the employer's ability to meet the employer's
28 liability to the employee under this chapter, shall be considered to be a qualified self-
29 insurer under this chapter;

30 (4) if the employer's liability under the workers' compensation law of
31 another state is insured, the employer's carrier, as to the employee or the employee's

1 dependents only, shall be considered to be an insurer authorized to write insurance
2 under and be subject to this chapter; however, unless its contract with the employer
3 requires it to pay an amount equivalent to the compensation benefits provided by this
4 chapter, its liability for income benefits or medical and related benefits may not
5 exceed the amounts of the benefits for which the insurer would have been liable under
6 the workers' compensation law of the other state;

7 (5) if the amount for which the employer's insurance is liable under (3)
8 and (4) of this subsection is less than the total of the compensation benefits to which
9 the employee is entitled under this chapter, the director [BOARD] may, if the
10 director [IT] considers it necessary, require the employer to file security satisfactory
11 to the director [BOARD] to secure the payment of benefits due the employee or the
12 employee's dependents under this chapter; and

13 (6) upon compliance with the preceding requirements of this
14 subsection, the employer, as to the employee only, shall be considered to have secured
15 the payment of compensation under this chapter.

16 * **Sec. 12.** AS 23.30.012 is amended to read:

17 **Sec. 23.30.012. Agreements in regard to claims.** (a) At any time after
18 death, or after 30 days subsequent to the date of the injury, the employer and the
19 employee or the beneficiary or beneficiaries, as the case may be, have the right to
20 reach an agreement in regard to a claim for injury or death under this chapter [IN
21 ACCORDANCE WITH THE APPLICABLE SCHEDULE IN THIS CHAPTER], but
22 a memorandum of the agreement in a form prescribed by the director [BOARD] shall
23 be filed with the division [BOARD]. Otherwise, the agreement is void for any
24 purpose. An agreement filed with the division discharges the liability of the
25 employer for the compensation, notwithstanding the provisions of AS 23.30.130,
26 23.30.160, and 23.30.245, and is enforceable as a compensation order.

27 (b) If the claimant or beneficiary is not represented by an attorney
28 licensed to practice in this state, or the beneficiary is a minor, the division shall
29 request review of the agreement by a hearing panel. If approved by a hearing
30 panel [THE BOARD], the agreement is enforceable the same as an order or award of
31 a hearing panel [THE BOARD] and discharges the liability of the employer for the

1 compensation notwithstanding the provisions of AS 23.30.130, 23.30.160, and
2 23.30.245. The agreement shall be approved by a hearing panel [THE BOARD] only
3 when the terms conform to the provisions of this chapter and, if it involves or is likely
4 to involve permanent disability, a hearing panel [THE BOARD] may require an
5 impartial medical examination and a hearing in order to determine whether or not to
6 approve the agreement. A [THE BOARD MAY APPROVE] lump-sum settlement
7 may be approved [SETTLEMENTS] when it appears to be to the best interest of the
8 employee or beneficiary or beneficiaries.

9 * Sec. 13. AS 23.30.015(b) is amended to read:

10 (b) Acceptance of compensation under [AN AWARD IN] a compensation
11 order filed with the office of the commission [BY THE BOARD] operates as an
12 assignment to the employer of all rights of the person entitled to compensation and the
13 personal representative of a deceased employee to recover damages from the third
14 person unless the person or representative entitled to compensation commences an
15 action against the third person within one year after an order [AWARD].

16 * Sec. 14. AS 23.30.015(e) is amended to read:

17 (e) An amount recovered by the employer under an assignment, whether by
18 action or compromise, shall be distributed as follows:

19 (1) the employer shall retain an amount equal to

20 (A) the expenses incurred by the employer with respect to the
21 action or compromise, including [A] reasonable attorney fees [FEE]
22 determined by a hearing panel [THE BOARD];

23 (B) the cost of all benefits actually furnished by the employer
24 under this chapter;

25 (C) all amounts paid as compensation and second injury
26 [SECOND-INJURY] fund payments, and, if the employer is self-insured or
27 uninsured, all service fees paid under AS 23.05.067;

28 (D) the present value of all amounts payable later as
29 compensation, computed from a schedule prepared by the director [BOARD];
30 and the present value of the estimated cost of all benefits to be furnished later
31 under AS 23.30.095 [AS ESTIMATED BY THE BOARD]; the amounts so

1 computed and estimated shall [TO] be retained by the employer as a trust fund
2 to pay compensation and the cost of benefits as they become due and to pay
3 any finally remaining excess sum to the person entitled to compensation or to
4 the representative; and

5 (2) the employer shall pay any excess to the person entitled to
6 compensation or to the representative of that person.

7 * Sec. 15. AS 23.30.015(j) is amended to read:

8 (j) Notice of the commencement of an action against a third party shall be
9 given to the division [BOARD] and to all interested parties within 30 days. If a
10 request for a hearing under AS 23.30.110 has been filed, notice of the
11 commencement of the action shall also be filed with the commission.

12 * Sec. 16. AS 23.30.025(a) is amended to read:

13 (a) An insurer may not enter into or issue a policy of insurance under this
14 chapter until its policy form has been submitted to and approved by the director of the
15 division of insurance. The director of the division of insurance may not approve the
16 policy form of an insurance company until the company files with it the certificate of
17 the director of the division of insurance showing that the company is authorized to
18 transact the business of workers' compensation insurance in the state. The filing of a
19 policy form by an insurance company with the division of workers' compensation
20 [BOARD] for approval constitutes, on the part of the company, a conclusive and
21 unqualified acceptance of the provisions of this chapter [,] and an agreement by it to
22 be bound by them.

23 * Sec. 17. AS 23.30.030(5) is amended to read:

24 (5) A termination of the policy by cancellation is not effective as to the
25 employees of the insured employer covered by it until 20 days after written notice of
26 the termination has been received by the division [BOARD]. If the employer has a
27 contract with the state or a home rule or other political subdivision of the state, and the
28 employer's policy is cancelled due to nonpayment of a premium, the termination of the
29 policy is not effective as to the employees of the insured employer covered by it until
30 20 days after written notice of the termination has been received by the contracting
31 agency, and the agency has the option of continuing the payments on behalf of the

1 employer in order to keep the policy in force. If, however, the employer has secured
2 insurance with another insurance carrier, cancellation is effective as of the date of the
3 new coverage.

4 * Sec. 18. AS 23.30.030(6) is amended to read:

5 (6) All claims for compensation, death benefits, physician's fees,
6 nurse's charges, hospital services, hospital supplies, medicines, prosthetic devices,
7 transportation charges to the nearest point where adequate medical facilities are
8 available, and burial expenses [,] may be made directly against either the employer or
9 the insurer, or both, and the order or award of a hearing panel [THE BOARD] may
10 be made against either the employer or the insurer or both.

11 * Sec. 19. AS 23.30.040(a) is amended to read:

12 (a) There is created a second injury fund, administered by the director
13 [COMMISSIONER]. Money in the second injury fund may only be paid for the
14 benefit of those persons entitled to payment of benefits from the second injury fund
15 under this chapter. Payments from the second injury fund must be made by the
16 director [COMMISSIONER] in accordance with the orders [AND AWARDS] of a
17 hearing panel [THE BOARD].

18 * Sec. 20. AS 23.30.040(d) is amended to read:

19 (d) The director [BOARD] may refund a payment made into the second
20 injury fund if the employer or insurance carrier shows that it made the payment by
21 mistake or inadvertence, or if it shows there existed at the time of the death of the
22 employee a beneficiary entitled to benefits under AS 23.30.215.

23 * Sec. 21. AS 23.30.041(a) is amended to read:

24 (a) The director [BOARD] shall select and employ a reemployment benefits
25 administrator. The director [BOARD] may authorize the administrator to select and
26 employ additional staff. The administrator is in the partially exempt service under
27 AS 39.25.120.

28 * Sec. 22. AS 23.30.041(b) is amended to read:

29 (b) The administrator shall

30 (1) enforce regulations adopted by the department [BOARD] to
31 implement this section;

1 (2) recommend regulations for adoption by the department [BOARD]
2 that establish performance and reporting criteria for rehabilitation specialists;

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

5 (4) review on an annual basis the performance of rehabilitation
6 specialists to determine continued eligibility for delivery of rehabilitation services;

7 (5) submit to the department, on or before May 1 of each year, a report
8 of reemployment benefits provided under this section for the previous calendar year;
9 the report must include a general section, sections related to each rehabilitation
10 specialist employed under this section, and a statistical summary of all rehabilitation
11 cases, including

12 (A) the estimated and actual cost of each active rehabilitation
13 plan;

14 (B) the estimated and actual time of each rehabilitation plan;

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

17 (D) the cost of reemployment benefits;

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

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

23 * Sec. 23. AS 23.30.041(d) is amended to read:

24 (d) Within 30 days after the referral by the administrator, the rehabilitation
25 specialist shall perform the eligibility evaluation and issue a report of findings. The
26 administrator may grant up to an additional 30 days for performance of the eligibility
27 evaluation upon notification of unusual and extenuating circumstances and the
28 rehabilitation specialist's request. Within 14 days after receipt of the report from the
29 rehabilitation specialist, the administrator shall notify the parties of the employee's
30 eligibility for reemployment preparation benefits. Within 10 days after the decision,
31 either party may seek review of the decision by requesting a hearing under

1 AS 23.30.110. The hearing shall be held within 30 days after it is requested. The
2 hearing panel [BOARD] shall uphold the decision of the administrator except for
3 abuse of discretion on the administrator's part.

4 * Sec. 24. AS 23.30.041(h) is amended to read:

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

- 10 (1) a determination of the occupational goal in the labor market;
- 11 (2) an inventory of the employee's technical skills, transferable skills,
12 physical and intellectual capacities, academic achievement, emotional condition, and
13 family support;
- 14 (3) a plan to acquire the occupational skills to be employable;
- 15 (4) the cost estimate of the reemployment plan, including provider
16 fees; and the cost of tuition, books, tools [,] and supplies, transportation, temporary
17 lodging, or job modification devices;
- 18 (5) the estimated length of time that the plan will take;
- 19 (6) the date that the plan will commence;
- 20 (7) the estimated time of medical stability as predicted by a treating
21 physician or by a physician who has examined the employee at the request of the
22 employer or the director [BOARD], or by referral of the treating physician;
- 23 (8) a detailed description and plan schedule;
- 24 (9) a finding by the rehabilitation specialist that the inventory under (2)
25 of this subsection indicates that the employee can be reasonably expected to
26 satisfactorily complete the plan and perform in a new occupation within the time and
27 cost limitations of the plan; and
- 28 (10) a provision requiring that, after a person has been assigned to
29 perform medical management services for an injured employee, the person shall send
30 written notice to the employee, the employer, and the employee's physician explaining
31 in what capacity the person is employed, whom the person represents, and the scope of

1 the services to be provided.

2 * Sec. 25. AS 23.30.041(j) is amended to read:

3 (j) The employee, rehabilitation specialist, and the employer shall sign the
4 reemployment benefits plan. If the employer and employee fail to agree on a
5 reemployment plan, either party may submit a reemployment plan for approval to the
6 administrator; the administrator shall approve or deny a plan within 14 days after the
7 plan is submitted; within 10 days after [OF] the decision, either party may seek
8 review of the decision by requesting a hearing under AS 23.30.110; a hearing panel
9 [THE BOARD] shall uphold the decision of the administrator unless evidence is
10 submitted supporting an allegation of abuse of discretion on the part of the
11 administrator; a hearing panel [THE BOARD] shall render a decision within 30 days
12 after completion of the hearing.

13 * Sec. 26. AS 23.30.041(o) is amended to read:

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

23 * Sec. 27. AS 23.30.041(p) is amended to read:

24 (p) When the United States Department of Labor publishes a new edition,
25 revision, or replacement for the "Selected Characteristics of Occupations Defined in
26 the Revised Dictionary of Occupational Titles" referred to in (e) of this section, the
27 director [BOARD] shall, not later than 90 days after the last day of the month in
28 which the new edition, revision, or replacement standard is published, hold an open
29 meeting under AS 44.62.310 to select the proposed date on which the new edition,
30 revision, or replacement standard will be implemented to make all eligibility
31 determinations required under (e) of this section. The date selected by the department

1 [BOARD] for implementing the new edition, revision, or replacement standard may
2 not be later than 90 days after the last day of the month in which the new edition,
3 revision, or replacement standard is published. After the meeting, the director
4 [BOARD] shall issue a public notice announcing the date selected by the
5 department. The requirements of AS 44.62.010 - 44.62.300 do not apply to the
6 selection or announcement of the date under this subsection.

7 * Sec. 28. AS 23.30.041(q) is amended to read:

8 (q) Notwithstanding AS 23.30.012, after medical stability has been determined
9 and a physician has predicted that the employee may have a permanent impairment
10 that may cause the employee to have permanent physical capacities that are less than
11 the physical demands of the employee's job at the time of injury, an employee may
12 waive any benefits or rights under this section, including an eligibility evaluation and
13 benefits related to a reemployment plan. To waive any benefits or rights under this
14 section, an employee must file a statement under oath with the division [BOARD] to
15 notify the parties of the waiver and to specify the scope of benefits or rights that the
16 employee seeks to waive. The statement must be on a form prescribed or approved by
17 the director [BOARD]. The division [BOARD] shall serve the notice of waiver on
18 all parties to the claim within 10 days after filing. The waiver is effective upon service
19 to the party. A waiver effective under this subsection discharges the liability of the
20 employer for the benefits or rights contained in this section. The waiver may not be
21 modified under AS 23.30.130.

22 * Sec. 29. AS 23.30.045(d) is amended to read:

23 (d) A contract may not be awarded by the state or a home rule or other
24 political subdivision of the state unless the person to whom the contract is to be
25 awarded has submitted to the contracting agency proof, furnished by the insurance
26 carrier, of current coverage by workers' compensation insurance from an insurance
27 company or association authorized to transact the business of workers' compensation
28 insurance in this state or proof, furnished by the division [BOARD], of a current
29 certificate of self-insurance from the director [BOARD]. The person to whom the
30 contract is awarded shall keep the workers' compensation insurance policy in effect
31 during the life of the contract with the state or political subdivision. If the state or the

1 political subdivision of the state fails to obtain proof of coverage or self-insurance or
2 to protect itself under (e) of this section, and an employee of the contractor is injured
3 during the term of the contract, the state or the political subdivision is liable for
4 workers' compensation to the employee if the employee is unable to recover from the
5 employer because of the employer's lack of financial assets. The state or the political
6 subdivision is not liable, however, to the employee for workers' compensation if the
7 employee can recover from the employer under (a) and (b) of this section.

8 * Sec. 30. AS 23.30.045(e) is amended to read:

9 (e) When a contracting agency of the state or a political subdivision receives
10 notice that the workers' compensation insurance policy of an employer to whom the
11 agency has awarded a contract has been cancelled due to nonpayment of a premium,
12 without being replaced by a comparable policy, the agency may either terminate the
13 contract with the employer or continue the premium payments on behalf of the
14 employer in order to keep the policy in force during the life of the agency's contract.
15 If the agency chooses to keep the policy in force, it may deduct its payments from the
16 contract price or bring an action against the employer to recover the amount of the
17 payments. When the contracting agency receives notice that the director [BOARD]
18 has revoked a certificate of self-insurance held by a person to whom a contract has
19 been awarded, the agency may terminate the contract. This subsection does not limit
20 the causes of action or remedies that the state or political subdivision may have against
21 the employer.

22 * Sec. 31. AS 23.30.065 is amended to read:

23 **Sec. 23.30.065. Employer's record of injuries.** An employer shall keep a
24 record in respect of an injury to an employee. The record must contain the
25 information of disease, other disability, or death with [IN] respect to an injury that the
26 division [BOARD] requires, and must be available to inspection by the division
27 [BOARD] or by a state authority at the times and under the conditions that the
28 department [BOARD] prescribes by regulation.

29 * Sec. 32. AS 23.30.070(a) is amended to read:

30 (a) Within 10 days from the date the employer has knowledge of an injury or
31 death or from the date the employer has knowledge of a disease or infection, alleged

1 by the employee or on behalf of the employee to have arisen out of and in the course
2 of the employment, the employer shall send to the division [BOARD] a report setting
3 out

4 (1) the name, address, and business of the employer;

5 (2) the name, address, and occupation of the employee;

6 (3) the cause and nature of the alleged injury or death;

7 (4) the year, month, day, and hour when and the particular locality
8 where the alleged injury or death occurred; and

9 (5) the other information that the division [BOARD] may require.

10 * Sec. 33. AS 23.30.070(b) is amended to read:

11 (b) Additional reports with [IN] respect to the injury and to the condition of
12 the employee shall be sent by the employer to the division [BOARD] at the times and
13 in the manner that the director [BOARD] prescribes.

14 * Sec. 34. AS 23.30.070(d) is amended to read:

15 (d) Mailing of the report and copy to the division [BOARD] in a stamped
16 envelope, within the time prescribed in (a) or (b) of this section, is compliance with
17 this section.

18 * Sec. 35. AS 23.30.070(f) is amended to read:

19 (f) An employer who fails or refuses to send a report required of the employer
20 by this section or who fails or refuses to send the report required by (a) of this section
21 within the time required shall, if so required by a hearing panel after a hearing
22 [THE BOARD], pay the employee or the legal representative of the employee or other
23 person entitled to compensation by reason of the employee's injury or death an
24 additional award equal to 20 percent of the amounts that were unpaid when due. The
25 award shall be against either the employer or the insurance carrier, or both.

26 * Sec. 36. AS 23.30.075 is amended to read:

27 **Sec. 23.30.075. Employer's liability to pay.** (a) An employer under this
28 chapter, unless exempted, shall either insure and keep insured for the employer's
29 liability under this chapter in an insurance company or association duly authorized to
30 transact the business of workers' compensation insurance in this state, or shall furnish
31 the division [BOARD] satisfactory proof of the employer's financial ability to pay

1 directly the compensation provided for. If an employer elects to pay directly, the
2 director [BOARD] may, in the director's [ITS] discretion, require the deposit of an
3 acceptable security, indemnity, or bond to secure the payment of compensation
4 liabilities as they are incurred.

5 (b) If an employer fails to insure and keep insured employees subject to this
6 chapter or fails to obtain a certificate of self-insurance from the division [BOARD],
7 upon conviction, the court shall impose a fine of \$10,000 and may impose a sentence
8 of imprisonment for not more than one year. If an employer is a corporation, all
9 persons who, at the time of the injury or death, had authority to insure the corporation
10 or apply for a certificate of self-insurance, and the person actively in charge of the
11 business of the corporation shall be subject to the penalties prescribed in this
12 subsection and shall be personally, jointly, and severally liable together with the
13 corporation for the payment of all compensation or other benefits for which the
14 corporation is liable under this chapter if the corporation at that time is not insured or
15 qualified as a self-insurer.

16 * Sec. 37. AS 23.30.080(d) is amended to read:

17 (d) If an employer fails to insure or provide security as required by
18 AS 23.30.075, the director [BOARD] may petition a hearing examiner to issue a
19 stop order prohibiting the use of employee labor by the employer until the employer
20 insures or provides security as required by AS 23.30.075. The failure of an employer
21 to file evidence of compliance as required by AS 23.30.085 creates a rebuttable
22 presumption that the employer has failed to insure or provide security as required by
23 AS 23.30.075. If the director presents evidence with the petition that hazards in
24 the employment constitute a danger that could reasonably be expected to
25 immediately cause an employee death or serious physical harm, the petition may
26 be heard on shortened notice. If an employer fails to comply with a stop order
27 issued under this section, a hearing examiner [THE BOARD] shall assess a civil
28 penalty of \$1,000 a [PER] day. The employer may not obtain a public contract with
29 the state or a political subdivision of the state for three years following the violation of
30 the stop order.

31 * Sec. 38. AS 23.30.080 is amended by adding new subsections to read:

1 (e) If an employer fails, refuses, or neglects to insure or provide security as
2 required by AS 23.30.075(a), the director may petition a hearing examiner to order
3 payment of a civil penalty to the state of an amount up to \$100 for each employee for
4 each day an employee is employed while the employer is uninsured or does not
5 provide the security required by AS 23.30.075(a). The failure of an employer to file
6 evidence of compliance as required by AS 23.30.085 creates a rebuttable presumption
7 that the employer has failed to obtain and keep insurance or provide security as
8 required by AS 23.30.075(a). If the director presents evidence with the petition that
9 hazards in the employment constitute a danger that could reasonably be expected to
10 immediately cause an employee death or serious physical harm, the petition may be
11 heard on shortened notice.

12 (f) If an employer fails to pay a civil penalty ordered under (d) or (e) of this
13 section within seven days after the date of service of the order upon the employer, the
14 director may declare the employer in default. The director shall file a certified copy of
15 the penalty order and declaration of default with the clerk of the superior court. The
16 court shall, upon the filing of the copy of the order and declaration, enter judgment for
17 the amount declared in default if it is in accordance with law. Anytime after a
18 declaration of default, the attorney general, when requested to do so by the director,
19 shall take appropriate action to assure collection of defaulted payment. Review of the
20 judgment may be had as provided under the Alaska Rules of Civil Procedure. Final
21 proceedings to execute the judgment may be had by writ of execution.

22 * Sec. 39. AS 23.30.085(a) is amended to read:

23 (a) An employer subject to this chapter, unless exempted, shall initially file
24 evidence of compliance with the insurance provisions of this chapter with the division
25 [BOARD], in the form prescribed by the director [IT]. The employer shall also give
26 evidence of compliance within 10 days after the termination of the employer's
27 insurance by expiration or cancellation. These requirements do not apply to an
28 employer who has certification from the division [BOARD] of the employer's
29 financial ability to pay compensation directly without insurance.

30 * Sec. 40. AS 23.30.090 is amended to read:

31 **Sec. 23.30.090. Self-insurance certificates.** If an employer has complied

1 with the provisions of this chapter relating to self-insurance and has paid annual
2 service fees assessed under AS 23.05.067, the director [BOARD] shall issue the
3 employer a certificate that shall remain in force for a period fixed by the director
4 [BOARD]. The director [BOARD] may, upon at least 10 days' notice and a hearing,
5 revoke a self-insurance certificate upon satisfactory proof that an employer is no
6 longer entitled to it. The hearing shall be held by a hearing examiner. The hearing
7 examiner shall make a proposed decision to the director, who may adopt, amend
8 or reject it in the director's discretion. After revocation, the director [BOARD]
9 may grant a new certificate to an employer, upon the employer's petition and
10 satisfactory proof of the employer's financial ability as provided in this chapter. An
11 employer authorized as a self-insurer shall provide claims facilities through its own
12 staffed adjusting facilities located within the state, or independent, licensed, resident
13 adjusters with power to effect settlement within the state.

14 * Sec. 41. AS 23.30.090 is amended by adding a new subsection to read:

15 (b) All testimony given before a hearing examiner under this section shall be
16 recorded, but need not be transcribed unless further review is initiated. Hearings
17 before a hearing examiner shall be open to the public.

18 * Sec. 42. AS 23.30.095(a) is amended to read:

19 (a) The employer shall furnish medical, surgical, and other attendance or
20 treatment, nurse and hospital service, medicine, crutches, and apparatus for the period
21 that [WHICH] the nature of the injury or the process of recovery requires, not
22 exceeding two years from and after the date of injury to the employee. However, if the
23 condition requiring the treatment, apparatus, or medicine is a latent one, the two-year
24 period runs from the time the employee has knowledge of the nature of the employee's
25 disability and its relationship to the employment and after disablement. If [IT SHALL
26 BE ADDITIONALLY PROVIDED THAT, IF] continued treatment or care or both
27 beyond the two-year period is indicated, the injured employee has the right of review
28 by a hearing panel [THE BOARD] The hearing panel [BOARD] may authorize
29 continued treatment or care or both as the process of recovery may require. When
30 medical care is required, the injured employee may designate a licensed physician to
31 provide all medical and related benefits. The employee may not make more than one

1 change in the employee's choice of attending physician without the written consent of
2 the employer. Referral to a specialist by the employee's attending physician is not
3 considered a change in physicians. Upon procuring the services of a physician, the
4 injured employee shall give proper notification of the selection to the employer within
5 a reasonable time after first being treated. Notice of a change in the attending
6 physician shall be given before the change.

7 * Sec. 43. AS 23.30.095(c) is amended to read:

8 (c) A claim for medical or surgical treatment [,] or treatment requiring
9 continuing and multiple treatments of a similar nature is not valid and enforceable
10 against the employer unless, within 14 days following treatment, the physician or
11 health care provider giving the treatment or the employee receiving it furnishes to the
12 employer and the division [BOARD] notice of the injury and treatment, preferably on
13 a form prescribed by the director [BOARD]. A hearing panel [THE BOARD] shall,
14 however, excuse the failure to furnish notice within 14 days when the hearing panel
15 [IT] finds it to be in the interest of justice to do so, and the hearing panel [IT] may,
16 upon application by a party in interest, make an award for the reasonable value of the
17 medical or surgical treatment so obtained by the employee. When a claim is made for
18 a course of treatment requiring continuing and multiple treatments of a similar nature,
19 in addition to the notice, the physician or health care provider shall furnish a written
20 treatment plan if the course of treatment will require more frequent outpatient visits
21 than the standard treatment frequency for the nature and degree of the injury and the
22 type of treatments. The treatment plan shall be furnished to the employee and the
23 employer within 14 days after treatment begins. The treatment plan must include
24 objectives, modalities, frequency of treatments, and reasons for the frequency of
25 treatments. If the treatment plan is not furnished as required under this subsection,
26 neither the employer nor the employee may be required to pay for treatments that
27 exceed the frequency standard. The director shall propose and the department
28 [BOARD] shall adopt regulations establishing standards for frequency of treatment.

29 * Sec. 44. AS 23.30.095(d) is amended to read:

30 (d) If at any time during the period the employee unreasonably refuses to
31 submit to medical or surgical treatment, a hearing panel [THE BOARD] may by

1 order suspend the payment of further compensation while the refusal continues, and no
2 compensation may be paid at any time during the period of suspension, unless the
3 circumstances justified the refusal.

4 * Sec. 45. AS 23.30.095(e) is amended to read:

5 (e) The employee shall, after an injury, at reasonable times during the
6 continuance of the disability, if requested by the employer or when ordered by a
7 hearing panel [THE BOARD], submit to an examination by a physician or surgeon of
8 the employer's choice authorized to practice medicine under the laws of the
9 jurisdiction in which the examination occurs, furnished and paid for by the employer.
10 The employer may not make more than one change in the employer's choice of a
11 physician or surgeon without the written consent of the employee. Referral to a
12 specialist by the employer's physician is not considered a change in physicians. An
13 examination requested by the employer not less than 14 days after injury, and every 60
14 days thereafter, shall be presumed to be reasonable, and the employee shall submit to
15 the examination without further request or order by a hearing panel [THE BOARD].
16 Unless medically appropriate, the physician shall use existing diagnostic data to
17 complete the examination. Facts relative to the injury or claim communicated to or
18 otherwise learned by a physician or surgeon who may have attended or examined the
19 employee [,] or who may have been present at an examination are not privileged,
20 either in the hearings provided for in this chapter or an action to recover damages
21 against an employer who is subject to the compensation provisions of this chapter. If
22 an employee refuses to submit to an examination provided for in this section, the
23 employee's rights to compensation shall be suspended until the obstruction or refusal
24 ceases, and the employee's compensation during the period of suspension may, in the
25 discretion of a hearing panel [THE BOARD] or the court determining an action
26 brought for the recovery of damages under this chapter, be forfeited. In [THE
27 BOARD IN] any case of death, a hearing examiner may order [REQUIRE] an
28 autopsy at the expense of the party requesting the autopsy. An autopsy may not be
29 held without notice first being given to the widow or widower or next of kin if they
30 reside in the state or their whereabouts can be reasonably ascertained, of the time and
31 place of the autopsy and reasonable time and opportunity given the widow or widower

1 or next of kin to have a representative present to witness the autopsy. If adequate
2 notice is not given, the findings from the autopsy may be suppressed on petition
3 [MOTION] made to a hearing examiner [THE BOARD] or to the superior court, as
4 the case may be.

5 * Sec. 46. AS 23.30.095(f) is amended to read:

6 (f) All fees and other charges for medical treatment or service shall be subject
7 to regulation by the department [BOARD] but may not exceed usual, customary, and
8 reasonable fees for the treatment or service in the community in which it is rendered,
9 as determined by the director [BOARD]. An employee may not be required to pay a
10 fee or charge for medical treatment or service. The director shall propose and the
11 department [BOARD] shall adopt updated usual, customary, and reasonable medical
12 fee schedules at least once each year.

13 * Sec. 47. AS 23.30.095(h) is amended to read:

14 (h) Upon the filing with the division [BOARD] by a party in interest of an
15 application or other pleading, all parties to the proceeding must immediately, or in any
16 event within five days after service of the pleading, send to the division [BOARD] the
17 original signed reports of all physicians relating to the proceedings that [WHICH]
18 they may have in their possession or under their control, and copies of the reports shall
19 be served by the party immediately on any [THE] adverse party. There is a
20 continuing duty on all [THE] parties to [SO] file and serve all the reports during the
21 pendency of the proceeding.

22 * Sec. 48. AS 23.30.095(j) is amended to read:

23 (j) The director [BOARD] may appoint a medical services review committee,
24 or contract with an existing organization in the state or another state, to assist and
25 advise the director [BOARD] in matters involving the appropriateness, necessity, and
26 cost of medical and related services provided under this chapter.

27 * Sec. 49. AS 23.30.095(k) is amended to read:

28 (k) In the event of a medical dispute regarding determinations of causation,
29 medical stability, ability to enter a reemployment plan, degree of impairment,
30 functional capacity, the amount and efficacy of the continuance of or necessity of
31 treatment, or compensability between the employee's attending physician and the

1 employer's independent medical evaluation, the director [BOARD] may require that a
2 second independent medical evaluation be conducted by a physician or physicians
3 selected [BY THE BOARD] from a list established and maintained by the director
4 [BOARD]. The cost of an examination and medical report shall be paid by the
5 employer. The report of an independent medical examiner shall be furnished to the
6 division [BOARD] and to the parties within 14 days after the examination is
7 concluded. A person may not seek damages from an independent medical examiner
8 caused by the rendering of an opinion or providing testimony under this subsection,
9 except in the event of fraud or gross incompetence.

10 * Sec. 50. AS 23.30.100(a) is amended to read:

11 (a) Notice of an injury or death with [IN] respect to which compensation is
12 payable under this chapter shall be given within 30 days after the date of such injury
13 or death to the division [BOARD] and to the employer.

14 * Sec. 51. AS 23.30.100(c) is amended to read:

15 (c) Notice shall be given to the division [BOARD] by delivering it or sending
16 it by mail addressed to the division's [BOARD'S] office, and to the employer by
17 delivering it to the employer or by sending it by mail addressed to the employer at the
18 employer's last known place of business. If the employer is a partnership, the notice
19 may be given to a partner, or, if a corporation, the notice may be given to an agent or
20 officer upon whom legal process may be served or who is in charge of the business in
21 the place where the injury occurred.

22 * Sec. 52. AS 23.30.100(d) is amended to read:

23 (d) Failure to give notice does not bar a claim under this chapter

24 (1) if the employer, an agent of the employer in charge of the business
25 in the place where the injury occurred, or the carrier had knowledge of the injury or
26 death and a hearing panel [THE BOARD] determines that the employer or carrier has
27 not been prejudiced by failure to give notice;

28 (2) if a hearing panel [THE BOARD] excuses the failure on the
29 ground that, for some satisfactory reason, notice could not be given;

30 (3) unless objection to the failure is raised before a hearing panel
31 [THE BOARD] at the first hearing of a claim for compensation with [IN] respect to