



SB

52

3852



FRANK H. MURKOWSKI
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STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 11, 2005

The Honorable Ben Stevens
President of the Senate
Alaska State Legislature
State Capitol, Room 111
Juneau, AK 99801-1182

Dear President Stevens:

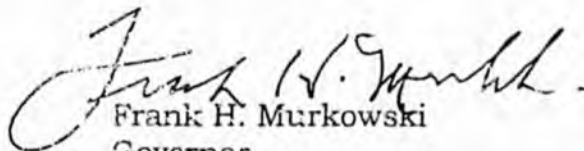
Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to the reorganization of certain business functions in the Department of Commerce, Community, and Economic Development (department).

This bill would make statutory changes needed to fully effectuate my Administrative Order No. 219, issued September 17, 2004. The purpose of that Order, and this bill, is to further a coordinated, "one-stop shopping" environment for establishing corporations, limited liability companies, and other business entities, for registering and reserving business names, and for obtaining business and occupational licenses. Under the Order, almost all "corporations" functions were moved from the Division of Banking, Securities, and Corporations to the Division of Occupational Licensing in the department. To reflect this reorganization in the statutes, the bill would substitute "department" for references to the two specific divisions. These amendments also will allow the commissioner of the department future latitude in assigning duties and functions within the department, including renaming divisions to more accurately reflect their current objectives.

Under the Order and this bill, duties related to the Alaska BIDCO Act under AS 10.13 and required statements of financial conditions of business entities would not be moved to the division of occupational licensing, although references in AS 10.13 to the Division of Banking, Securities, and Corporations would be changed by the bill to refer to the department rather than the currently named division.

I urge your prompt and favorable action on this measure.

Sincerely yours,


Frank H. Murkowski
Governor

Enclosure

COMMITTEE COPY

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: SB 52
 (S) Publish Date: 1/12/05

Revision Date/Time (Note if correction): _____ Dept. Affected: Commerce
 Title: Reorganize Corporations Functions RDU: Occupational Licensing (117)
 Component: Occupational Licensing
 Sponsor: Rules
 Requester: By Request of the Governor Component No.: 2360

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
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 (FY2005) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This legislation changes references to divisions that perform functions for forming business entities and makes them the responsibility of the department. There is no fiscal impact as a result of this legislation.

Prepared by: Jennifer Strickler, Administrative Manager Phone 907.465.2144
 Division: Division of Occupational Licensing Date/Time 12/3/04 4:53 PM
 Approved by: Edgar Blatchford, Commissioner Date 12/3/2004
 Agency: Department of Commerce

SB

129

ALASKA STATE LEGISLATURE

Senate District H
600 E. Railroad Avenue
Wasilla AK 99654
907-376-4866
907-373-4724 – Fax
Senator_Charlie_Huggins@legis.state.ak.us



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Charlie Huggins Senator

3/23/05

Sponsor Statement

CSSB 129(JUD) – An act relating to the wrongful recording of a notice of pendency of an action relating to title to or right to possession of real property

CSSB 129(JUD) seeks to discourage abusive filings of illegal lis pendens notices and in fact makes it a Class A misdemeanor to file a wrongful "notice of lis pendens"¹. While the filing does not create a formal lien, such a notice can have an impact similar to that of a lien on the ability of the targeted person to do business with the affected real estate.

CSSB 129(JUD) responds to instances of nuisance filings used as a form of retribution against public officials. Current law is clear that lis pendens are only supposed to be filed against property for which the title or right to possession is subject to litigation, but the recorder's office currently has no way to prevent people from filing improper lis pendens. Ordinarily, the improper filing is against property that is not subject to dispute; however, the filing is made simply because the filer has a grievance against the owner or someone connected with the owner.

In one case in 2003, a former state employee filed lis pendens targeting the home, development property and mining claims of members of the Alaska Board of Game, an assistant attorney general, and a real estate developer. None of the properties were actually the subject of a title or possession dispute, but the case took months and thousands of dollars of attorney time to resolve.

In a prosecution under this bill it is an affirmative defense that the owner of the property affected has consented in writing to the lien or the filing of the notice.

¹*Notice of lis pendens* . – A notice filed on public records for the purpose of warning all persons that the title to certain property is in litigation, and that they are in danger of being bound by an adverse judgment. The notice is for the purpose of preserving rights pending litigation.

Contact Information – Deborah Grundmann 465-4711



Alaska State Legislature

Senate Majority Web: www.akrepublicans.org

Sponsor: Senator Charlie Huggins
Current Version: CSSB 129 (JUD)
Contact: Deborah Grundmann, 465-3878

Fact Sheet for: Senate Bill 129

Short Title: WRONGFUL FILING OF LIS PENDENS

Summary:

- Makes it a Class A misdemeanor to file a wrongful notice that an action is pending that affects title to real property when the notice is filed with reckless disregard that the action would not affect title to the property, or no action is actually pending.

Benefits:

- Prohibits abusive real estate filings used for improper retribution against public servants.
- Eliminates public expense and unnecessary workload for court system and other staff.

Background:

- SB 129 relates to the wrongful recording of a notice of "lis pendens," which notifies a potential purchaser or lender that title to the property is subject to litigation. While the filing does not create a formal lien, such a notice can have an impact similar to that of a lien on the ability of the targeted person to do business with the affected real estate. The bill responds to instances of nuisance liens filed as a form of retribution against public officials. Current law clarifies that lis pendens are only supposed to be filed against property for which the title or right to possession is subject to litigation, but the recorder's office currently has no way to prevent people from filing improper lis pendens. Ordinarily, this is a filing against property that is not subject to dispute made simply because the filer has a grievance against the owner or someone connected with the owner. In one case in 2003, a former state employee filed lis pendens targeting the homes, development property and mining claims of members of the Alaska Board of Game and an assistant attorney general. None of the properties were actually the subject of a title or possession dispute, but the case took months and thousands of dollars of attorney time to resolve.

ALASKA STATE LEGISLATURE

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600 E. Railroad Avenue
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Charlie Huggins Senator

Sectional Analysis of CSSB 129(JUD) (wrongful recording of notice of pendency of action relating to title or possession of real property)

CSSB 129(JUD) seeks to discourage abusive filings of illegal lis pendens notices. There is currently no penalty for filing illegal lis pendens notices. Filing a lis pendens notice creates property title "clouds" that can interfere with property sales or financing.

Sec. 1. The first section of the bill adds an additional type of conduct to the actions designated in AS 11 6.560(a) as comprising "the crime of offering a false instrument for recording in the second degree." This crime is a Class A misdemeanor. Under CSSB 129(JUD) criminal liability is extended to those who file notices of lis pendens with the recorder of deeds with knowing or reckless disregard for the fact that the court action specified in the notice does not concern either the title to, or the right to possess, the real property referred to in the notice. Liability is also extended to those who file such a notice with knowing or reckless disregard for the fact that there is no pending court action at all that concerns either the title to, or the right to possess, the real property referred to in the notice.

The language in section 1 tracks AS 09.45.940, which sets out the circumstances under which it is proper to file with the recorder of deeds a notice of the pendency of an action affecting title to real property or the right to possession of real property. The common legal term for these notices is "notices of lis pendens." Under CSSB 129(JUD), a person knowingly or recklessly using a notice of lis pendens in circumstances not provided in AS 09.45.940 will, in general, be subject to prosecution.

Sec. 2. Section 2 makes it a complete defense to criminal liability if the person filing the wrongful notice shows that the owner of the property consented in writing to the filing. Thus, even if the filing of the notice is not within the law as set out in AS 09.45.940, the person making the filing is not guilty of a misdemeanor if the owner of the property consented in writing to let the wrongful document be filed with the recorder of deeds.

ALASKA LAND TITLE ASSOCIATION

P.O. Box 241811 • Anchorage, Alaska 99524

March 22, 2005

The Honorable Charlie Huggins
Alaska State Senate
State Capitol Building
Juneau, Alaska

Subject: Letter of Support for SB 129

Dear Senator Huggins:

The Legislative Committee of the Alaska Land Title Association (ALTA) has met and discussed SB129, an Act relating to wrongful recording of lis pendens. This letter is to express support by ALTA for SB129.

The Alaska Land Title Association is the state professional association and voice of the title insurance industry. ALTA members search, review and insure land titles to protect home buyers and mortgage lenders who invest in real estate. Members of the association are in business in communities throughout Alaska.

During our review and discussion on the bill, it was felt that SB129 would help prohibit abusive recordings of lis pendens against blameless property owners. While it is hard to imagine why someone would take such disingenuous methods, history has shown that this, indeed, can happen.

Thank you for sponsoring this bill and allowing us this opportunity to express support.

Sincerely,



Sheila Bader, President
Alaska Land Title Association
Sheila@akttitle.com

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

KENNETH H. MANNING, JD,)
)
 Plaintiff,)
)
 v.)
)
 ALASKA BOARD OF GAME, GREG)
 ROCZICKA, Chair, GEORGE MATTZ,)
 MIKE FLEAGLE, DANA PRUHS,)
 BEN GRUSSENDORF, Vice Chair,)
 GREG STREVELER, JULIE MAIER,)
 STATE OF ALASKA DEPT. OF LAW,)
 KEVIN SAXBY, ASSISTANT)
 ATTORNEY GENERAL, State of)
 Alaska Department of Law,)
)
 Defendants.)

Case No. 3AN-02-4392 Ci

AFFIDAVIT OF MARK SPARROW

Mark Sparrow, being first duly sworn, deposes and states:

1. My name is Mark Sparrow. I am a resident of Anchorage, Alaska and am over the age of eighteen. I make this affidavit on personal knowledge.
2. I am not a defendant in this case.
3. I have never been a member of the Alaska Board of Game.
4. I do not know Kenneth Manning, and to my knowledge I have never had any contact with him.
5. Since February, 2003, I have been one of the owners of Lot 9A, Block 6, Plat 71-256, District 301 (hereafter "Lot 9A").

6. Lot 9A is an integral part of a 28-unit condominium development project that is scheduled for construction this summer.

7. Lot 9A is under contract for sale at a price of \$244,500. The title company for the transaction is First American Title.

8. First American Title has informed me that it will not insure the title of Lot 9A until the *lis pendens* filed by Mr. Manning is removed. Title insurance is required for the transaction to proceed.

9. If the *lis pendens* is not removed promptly, I believe I will suffer serious financial harm.

Mark Sparrow

STATE OF ALASKA)
ANCHORAGE, ss) ss.

THIRD JUDICIAL DISTRICT

Personally appeared before me the above-named Mark Sparrow this ___ day of April, 2004, and made oath that the foregoing statements are true to the best of his knowledge.

Notary Public IN AND FOR ALASKA

Printed name:

My commission expires: _____

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 2
 Bill Version: CSSB 129(JUD)
 (S) Publish Date: 3/24/05

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
 Title: "An Act relating to the wrongful recording of a RDU: CIVIL
notice of pendency..." Component: Torts & Workers' Compensation
 Sponsor: Senator Huggins
 Requester: Senate Judiciary Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
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 (FY2005) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The proposed legislation would make it a Class A misdemeanor to present a lis pendens to a recorder with reckless disregard for the fact that the underlying action does not concern title to or possession of the property at issue. The intent of the legislation is to deter the use of improper restraints on real property of public officials and members of the public as a means of retribution or intimidation.

Passage of this legislation will have no fiscal impact on the Department of Law.

Prepared by: Kathryn Daughhettee, Director Phone: 465-3673
 Division: Administrative Services Division Date/Time: 3/18/05 2:32 PM
 Approved by: K. Daughhettee for Scott Nordstrand, Acting Attorney General Date: 3/18/2005
 Agency: Department of Law

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: CSSB 129(JUD)
 (S) Publish Date: 3/24/05

Revision Date/Time (Note if correction): _____ Dept. Affected: _____
 Title Wrongful Filing of Lis Pendens BRU Alaska Court System
 Component Trial Courts
 Sponsor Senator Huggins
 Requester _____ Component No. 768

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
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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TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The court system does not anticipate any fiscal impact from the passage of SB 129.

Prepared by: Douglas Wooliver, Administrative Attorney Phone 463-4750
 Division: Alaska Court System Date/Time 3/21/05 11:35 AM
 Approved by: Doug Wooliver for Stephanie Cole, Administrative Director Date 3/21/2005
 Agency: Alaska Court System

SB

130

24-GS112V
Bullock
5/1/05

HOUSE CS FOR CS FOR SENATE BILL NO. 130()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

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

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to workers' compensation and to assigned risk pools; establishing the**
2 **Task Force on Workers' Compensation; and providing for an effective date."**

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

4 *** Section 1.** AS 21.24.130 is amended by adding a new subsection to read:

5 (f) If an insurer is found to be insolvent by a proceeding under AS 21.78 or by
6 a court of competent jurisdiction in another state, the director shall take control of the
7 insurer's deposit made under AS 21.09.090(e). The deposit assets shall be released, at
8 the discretion of the director, to the Alaska Insurance Guaranty Association
9 (AS 21.80) to reimburse for a valid loss and loss expense claim payment made by the
10 association that is within the purpose of the deposit. The director shall pay the
11 remaining deposit assets to the receiver, conservator, rehabilitator, or liquidator of the
12 insurer, or to another properly designated official who succeeds to the management
13 and control of the insurer's assets, after the director determines that all loss and loss
14 expense liabilities have been paid that were incurred on the insurer's policies written in

1 this state for which the deposit was required.

2 * Sec. 2. AS 21.39.155(a) is amended to read:

3 (a) The director may require insurers, except a reciprocal insurer formed [BY
4 AND INSURING ONLY A GROUP OF MUNICIPALITIES OR NONPROFIT
5 PUBLIC UTILITIES] under AS 21.75 [OR A RECIPROCAL INSURER FORMED
6 UNDER AS 21.75 TO PROVIDE MARINE INSURANCE], as a condition of writing
7 a line of insurance dealing with medical malpractice or workers' compensation, to
8 participate in an assigned risk pool if the director finds that mandatory carrier
9 participation is in the public interest.

10 * Sec. 3. AS 23.05.067(a) is amended to read:

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

16 (1) for each employer,

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

20 (B) the service fee is 2.9 percent of all payments reported to the
21 Alaska Workers' Compensation Board under AS 23.30.155(m) or (n) [,
22 EXCEPT SECOND INJURY FUND PAYMENTS]; and

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

28 * Sec. 4. AS 23.30.005(a) is amended to read:

29 (a) The Alaska Workers' Compensation Board consists of two [A] southern
30 panels [PANEL] of three members sitting for the first judicial district, two [A]
31 northern panels [PANEL] of three members sitting for the second and fourth judicial

1 districts, five [FOUR] southcentral panels of three members each sitting for the third
2 judicial district, and one panel of three members that may sit in any judicial district.
3 Each panel must include the commissioner of labor and workforce development or a
4 hearing officer designated to represent [THE DESIGNATED REPRESENTATIVE
5 OF] the commissioner, a representative of industry, and a representative of labor. The
6 latter two members of each panel shall be appointed by the governor and are subject to
7 confirmation by a majority of the members of the legislature in joint session. The
8 board shall by regulation provide procedures to avoid conflicts and the
9 appearance of impropriety in hearings.

10 * Sec. 5. AS 23.30.005(b) is amended to read:

11 (b) The commissioner shall act as chair [CHAIRMAN] and executive officer
12 of the board and chair [CHAIRMAN] of each panel. The commissioner may
13 designate a representative to act for the commissioner as chair and executive
14 officer of the board. The commissioner may designate hearing officers to serve as
15 chairs of panels for hearing claims [IF THE COMMISSIONER DESIGNATES A
16 REPRESENTATIVE TO ACT FOR THE COMMISSIONER, THE
17 REPRESENTATIVE SHALL SERVE IN THAT CAPACITY ON THE BOARD
18 AND ON EACH PANEL].

19 * Sec. 6. AS 23.30.005(h) is amended to read:

20 (h) The department shall adopt rules for all panels, and procedures for the
21 periodic selection, retention, and removal of both rehabilitation specialists and
22 physicians under AS 23.30.041 and 23.30.095, and shall adopt regulations to carry out
23 the provisions of this chapter. The department may by regulation provide for
24 procedural, discovery, or stipulated matters to be heard and decided by the
25 commissioner or the commissioner's designated representative rather than a
26 panel. If a procedural, discovery, or stipulated matter is heard and decided by
27 the commissioner or the commissioner's designated representative, the action
28 taken is considered the action of the full board on that aspect of the claim.
29 Process and procedure under this chapter shall be as summary and simple as possible.
30 The department, the board or a member of it may for the purposes of this chapter
31 subpoena witnesses, administer or cause to be administered oaths, and may examine or

1 cause to have examined the parts of the books and records of the parties to a
2 proceeding that relate to questions in dispute. The superior court, on application of the
3 department, the board or any members of it, shall enforce the attendance and
4 testimony of witnesses and the production and examination of books, papers, and
5 records.

6 * Sec. 7. AS 23.30.012 is amended to read:

7 **Sec. 23.30.012. Agreements in regard to claims. (a)** At any time after
8 death, or after 30 days subsequent to the date of the injury, the employer and the
9 employee or the beneficiary or beneficiaries, as the case may be, have the right to
10 reach an agreement in regard to a claim for injury or death under this chapter [IN
11 ACCORDANCE WITH THE APPLICABLE SCHEDULE IN THIS CHAPTER], but
12 a memorandum of the agreement in a form prescribed by the director [BOARD] shall
13 be filed with the division [BOARD]. Otherwise, the agreement is void for any
14 purpose. Except as provided in (b) of this section, an agreement filed with the
15 division discharges the liability of the employer for the compensation,
16 notwithstanding the provisions of AS 23.30.130, 23.30.160, and 23.30.245, and is
17 enforceable as a compensation order.

18 (b) The agreement shall be reviewed by a panel of the board if the
19 claimant or beneficiary is not represented by an attorney licensed to practice in
20 this state, the beneficiary is a minor or incompetent, or the claimant is waiving
21 future medical benefits. If approved by the board, the agreement is enforceable the
22 same as an order or award of the board and discharges the liability of the employer for
23 the compensation notwithstanding the provisions of AS 23.30.130, 23.30.160, and
24 23.30.245. The agreement shall be approved by the board only when the terms
25 conform to the provisions of this chapter, and, if it involves or is likely to involve
26 permanent disability, the board may require an impartial medical examination and a
27 hearing in order to determine whether or not to approve the agreement. A [THE
28 BOARD MAY APPROVE] lump-sum settlement may be approved
29 [SETTLEMENTS] when it appears to be to the best interest of the employee or
30 beneficiary or beneficiaries.

31 * Sec. 8. AS 23.30.015(e) is amended to read:

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

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

4 (A) the expenses incurred by the employer with respect to the
5 action or compromise, including a reasonable attorney fee determined by the
6 board;

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

9 (C) all amounts paid as compensation [AND SECOND-
10 INJURY FUND] payments [.] and, if the employer is self-insured or
11 uninsured, all service fees paid under AS 23.05.067;

12 (D) the present value of all amounts payable later as
13 compensation, computed from a schedule prepared by the board, [;] and the
14 present value of the cost of all benefits to be furnished later under
15 AS 23.30.095 as estimated by the board; the amounts so computed and
16 estimated shall [TO] be retained by the employer as a trust fund to pay
17 compensation and the cost of benefits as they become due and to pay any
18 finally remaining excess sum to the person entitled to compensation or to the
19 representative; and

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

22 * Sec. 9. AS 23.30.015(j) is amended to read:

23 (j) Notice of the commencement of an action against a third party shall be
24 given to the division [BOARD] and to all interested parties within 30 days.

25 * Sec. 10. AS 23.30.025(a) is amended to read:

26 (a) An insurer may not enter into or issue a policy of insurance under this
27 chapter until its policy form has been submitted to and approved by the director of the
28 division of insurance. The director of the division of insurance may not approve the
29 policy form of an insurance company until the company files with it the certificate of
30 the director of the division of insurance showing that the company is authorized to
31 transact the business of workers' compensation insurance in the state. The filing of a

1 policy form by an insurance company with the division of workers' compensation
2 [BOARD] for approval constitutes, on the part of the company, a conclusive and
3 unqualified acceptance of the provisions of this chapter, and an agreement by it to be
4 bound by them.

5 * Sec. 11. AS 23.30.030(5) is amended to read:

6 (5) A termination of the policy by cancellation is not effective as to the
7 employees of the insured employer covered by it until 20 days after written notice of
8 the termination has been received by the division [BOARD]. If the employer has a
9 contract with the state or a home rule or other political subdivision of the state, and the
10 employer's policy is cancelled due to nonpayment of a premium, the termination of the
11 policy is not effective as to the employees of the insured employer covered by it until
12 20 days after written notice of the termination has been received by the contracting
13 agency, and the agency has the option of continuing the payments on behalf of the
14 employer in order to keep the policy in force. If, however, the employer has secured
15 insurance with another insurance carrier, cancellation is effective as of the date of the
16 new coverage.

17 * Sec. 12. AS 23.30.041(a) is amended to read:

18 (a) The director [BOARD] shall select and employ a reemployment benefits
19 administrator. The director [BOARD] may authorize the administrator to select and
20 employ additional staff. The administrator is in the partially exempt service under
21 AS 39.25.120.

22 * Sec. 13. AS 23.30.041(b) is amended to read:

23 (b) The administrator shall

- 24 (1) enforce regulations adopted by the board to implement this section;
25 (2) recommend regulations for adoption by the board that establish
26 performance and reporting criteria for rehabilitation specialists;
27 (3) enforce the quality and effectiveness of reemployment benefits
28 provided for under this section;
29 (4) review on an annual basis the performance of rehabilitation
30 specialists to determine continued eligibility for delivery of rehabilitation services;
31 (5) submit to the department, on or before May 1 of each year, a report

1 of reemployment benefits provided under this section for the previous calendar year;
2 the report must include a general section, sections related to each rehabilitation
3 specialist employed under this section, and a statistical summary of all rehabilitation
4 cases, including

5 (A) the estimated and actual cost of each active rehabilitation
6 plan;

7 (B) the estimated and actual time of each rehabilitation plan:

8 (C) a status report on all individuals requesting, waiving,
9 beginning, completing, or terminating a reemployment benefits program
10 including

11 (i) reasons for denial, waiver, suspension, or
12 termination;

13 (ii) dates of completion and [A] return to work; and

14 (iii) other information required by the director

15 [DATE];

16 (D) the cost of reemployment benefits;

17 (E) status reports of all individuals who successfully
18 completed a reemployment plan that includes

19 (i) the plan's occupational goal and whether the
20 individual obtained work after completion in the planned or
21 another occupation; and

22 (ii) the individual's employment status six months,
23 one year, and two years after reemployment plan completion;

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

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

29 * Sec. 14. AS 23.30.041(j) is amended to read:

30 (j) The employee, rehabilitation specialist, and [THE] employer shall sign the
31 reemployment benefits plan. If the employer and employee fail to agree on a

1 reemployment plan, either party may submit a reemployment plan for approval to the
2 administrator. The [; THE] administrator shall approve or deny a plan within 14 days
3 after the plan is submitted. Within [; WITHIN] 10 days after [OF] the decision,
4 either party may seek review of the decision by requesting a hearing under
5 AS 23.30.110. The [; THE] board shall uphold the decision of the administrator
6 unless evidence is submitted supporting an allegation of abuse of discretion on the part
7 of the administrator. The [; THE] board shall render a decision within 30 days after
8 completion of the hearing.

9 * Sec. 15. AS 23.30.041(k) is amended to read:

10 (k) Benefits related to the reemployment plan may not extend past two years
11 from date of plan approval or acceptance, whichever date occurs first, at which time
12 the benefits expire. If an employee reaches medical stability before completion of the
13 plan, temporary total disability benefits shall cease and permanent impairment benefits
14 shall then be paid at the employee's temporary total disability rate. If the employee's
15 permanent impairment benefits are exhausted before the completion or termination of
16 the reemployment process [PLAN], the employer shall provide compensation equal to
17 70 percent of the employee's spendable weekly wages, but not to exceed 105 percent
18 of the average weekly wage, until the completion or termination of the process
19 [PLAN], except that any compensation paid under this subsection is reduced by wages
20 earned by the employee while participating in the process [PLAN] to the extent that
21 the wages earned, when combined with the compensation paid under this subsection,
22 exceed the employee's temporary total disability rate. If permanent partial disability
23 or permanent partial impairment benefits have been paid in a lump sum before the
24 employee requested or was found eligible for reemployment benefits, payment of
25 benefits under this subsection is suspended until permanent partial disability benefits
26 would have ceased, had those benefits been paid at the employee's temporary total
27 disability rate, notwithstanding the provisions of AS 23.30.155(j). A permanent
28 impairment benefit remaining unpaid upon the completion or termination of the plan
29 shall be paid to the employee in a single lump sum. An employee may not be
30 considered permanently totally disabled so long as the employee is involved in the
31 rehabilitation process under this chapter. The fees of the rehabilitation specialist or

1 rehabilitation professional shall be paid by the employer and may not be included in
2 determining the cost of the reemployment plan.

3 * Sec. 16. AS 23.30.041(n) is amended to read:

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

7 (1) unreasonable failure to

8 (A) keep appointments;

9 (B) maintain passing grades;

10 (C) attend designated programs;

11 (D) maintain contact with the rehabilitation specialist;

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

15 (F) comply with the employee's responsibilities outlined in the
16 reemployment plan; or

17 (G) participate in any planned reemployment activity as
18 determined by the administrator; or

19 (2) failure to give written notice to the employer of the employee's
20 choice of rehabilitation specialists within 30 [15] days after receiving notice of
21 eligibility for benefits from the administrator as required by (g) of this section.

22 * Sec. 17. AS 23.30.041(p) is amended to read:

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

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

6 * Sec. 18. AS 23.30.041(q) is amended to read:

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

21 * Sec. 19. AS 23.30.065 is amended to read:

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

28 * Sec. 20. AS 23.30.070(a) is amended to read:

29 (a) Within 10 days from the date the employer has knowledge of an injury or
30 death or from the date the employer has knowledge of a disease or infection, alleged
31 by the employee or on behalf of the employee to have arisen out of and in the course

1 of the employment, the employer shall send to the division [BOARD] a report setting
2 out

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

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

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

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

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

9 * Sec. 21. AS 23.30.070(b) is amended to read:

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

13 * Sec. 22. AS 23.30.070(d) is amended to read:

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

17 * Sec. 23. AS 23.30.075 is amended to read:

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

26 (b) If an employer fails to insure and keep insured employees subject to this
27 chapter or fails to obtain a certificate of self-insurance from the division [BOARD],
28 upon conviction, the court shall impose a fine of \$10,000 and may impose a sentence
29 of imprisonment for not more than one year. If an employer is a corporation, all
30 persons who, at the time of the injury or death, had authority to insure the corporation
31 or apply for a certificate of self-insurance, and the person actively in charge of the

1 business of the corporation shall be subject to the penalties prescribed in this
2 subsection and shall be personally, jointly, and severally liable together with the
3 corporation for the payment of all compensation or other benefits for which the
4 corporation is liable under this chapter if the corporation at that time is not insured or
5 qualified as a self-insurer.

6 * Sec. 24. AS 23.30.080(d) is amended to read:

7 (d) If an employer fails to insure or provide security as required by
8 AS 23.30.075, the director [BOARD] may issue a stop order prohibiting the use of
9 employee labor by the employer until the employer insures or provides security as
10 required by AS 23.30.075. The failure of an employer to file evidence of compliance
11 as required by AS 23.30.085 creates a rebuttable presumption that the employer has
12 failed to insure or provide security as required by AS 23.30.075. If an employer fails
13 to comply with a stop order issued under this section, the board shall assess a civil
14 penalty of \$1,000 a [PER] day. The employer may not obtain a public contract with
15 the state or a political subdivision of the state for three years following the violation of
16 the stop order.

17 * Sec. 25. AS 23.30.080 is amended by adding new subsections to read:

18 (e) If a representative of the department investigates an employer's failure to
19 file the evidence of compliance required by AS 23.30.085 and, after investigation,
20 there is substantial evidence that the employer failed to insure or provide security as
21 required by AS 23.30.075, the division shall inform the employer. The director may
22 issue a stop order prohibiting the use of employee labor by the employer until the
23 employer insures or provides security as required by AS 23.30.075. The director may
24 issue a stop order, without a hearing, based on the representative's investigation. The
25 director shall dissolve a stop order issued under this subsection upon receipt of
26 substantial evidence that the employer is insured or has provided security as required
27 by AS 23.30.075(a). If an employer fails to comply with a stop order issued under this
28 subsection, the division may petition the board to assess a civil penalty. The board
29 may assess a civil penalty of \$1,000 per day. An employer who is assessed a penalty
30 under this subsection may not obtain a public contract with the state or a political
31 subdivision of the state for the three years following violation of the stop order.

1 (f) If an employer fails to insure or provide security as required by
2 AS 23.30.075, the division may petition the board to assess a civil penalty of up to
3 \$1,000 for each employee for each day an employee is employed while the employer
4 failed to insure or provide the security required by AS 23.30.075. The failure of an
5 employer to file evidence of compliance as required by AS 23.30.085 creates a
6 rebuttable presumption that the employer failed to insure or provide security as
7 required by AS 23.30.075.

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

19 * Sec. 26. AS 23.30 is amended by adding a new section to read:

20 **Sec. 23.30.082. Workers' compensation benefits guaranty fund.** (a) The
21 workers' compensation benefits guaranty fund is established in the general fund to
22 carry out the purposes of this section. The fund is composed of civil penalty payments
23 made by employers under AS 23.30.080, income earned on investment of the money
24 in the fund, money deposited in the fund by the department, and other appropriations
25 to the fund. Money appropriated to the fund does not lapse. Amounts in the fund may
26 be appropriated for claims against the fund, for expenses directly related to fund
27 operations and claims, for legal expenses, and for an employee's attorney fees and
28 costs.

29 (b) Every three months, the Department of Revenue shall provide the division
30 with a statement of the activities of, balances in, interest earned on, and interest
31 returned to the fund.

1 (c) Subject to the provisions of this section, an employee employed by an
2 employer who fails to meet the requirements of AS 23.30.075 and who fails to pay
3 compensation and benefits due to the employee under this chapter, may file a claim for
4 payment by the fund. In order to be eligible for payment, the claim form must be filed
5 within the same time, and in the same manner, as a workers' compensation claim. The
6 fund may assert the same defenses as an insured employer under this chapter.

7 (d) If the fund pays benefits to an employee under this section, the fund shall
8 be subrogated to all of the rights of the employee to the amount paid, and the
9 employee shall assign all right, title, and interest in that portion of the employee's
10 workers' compensation claim and any recovery under AS 23.30.015 to the fund.
11 Money collected by the division on the claim or recovery shall be deposited in the
12 fund.

13 (e) If the money deposited in the fund is insufficient at a given time to satisfy
14 a duly authorized claim against the fund, the fund shall, when sufficient money has
15 been deposited in the fund and appropriated, satisfy unpaid claims in the order in
16 which the claims were originally filed, without interest.

17 (f) The division may contract under AS 36.30 (State Procurement Code) with
18 a person for the person to adjust claims against the fund. The contract may cover one
19 or more claims.

20 (g) In this section, "fund" means the workers' compensation benefits guaranty
21 fund.

22 * Sec. 27. 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 board of the employer's financial ability to
29 pay compensation directly without insurance.

30 * Sec. 28. AS 23.30.095(h) is amended to read:

31 (h) Upon the filing with the division [BOARD] by a party in interest of a

1 claim [AN APPLICATION] or other pleading, all parties to the proceeding must
2 immediately, or in any event within five days after service of the pleading, send to the
3 division [BOARD] the original signed reports of all physicians relating to the
4 proceedings that [WHICH] they may have in their possession or under their control,
5 and copies of the reports shall be served by the party immediately on any [THE]
6 adverse party. There is a continuing duty on all [THE] parties to [SO] file and serve
7 all the reports during the pendency of the proceeding.

8 * Sec. 29. AS 23.30.095(j) is amended to read:

9 (j) The board shall [MAY] appoint a medical services review committee [, OR
10 CONTRACT WITH AN EXISTING ORGANIZATION IN THE STATE OR
11 ANOTHER STATE,] to assist and advise the board in matters involving the
12 appropriateness, necessity, and cost of medical and related services provided under
13 this chapter. The medical services review committee shall consist of seven
14 members to be appointed by the board as follows:

15 (1) one rehabilitation specialist as defined in AS 23.30.041;

16 (2) one public member who is not within the definition of "health
17 care provider" in AS 09.55.560;

18 (3) one chiropractic physician licensed under AS 08.20;

19 (4) four health care providers as defined in AS 09.55.560, except
20 that a chiropractic physician may not be appointed under this paragraph.

21 * Sec. 30. AS 23.30.095 is amended by adding a new subsection to read:

22 (n) A generic drug product must be used when dispensing a drug product to an
23 employee under this chapter unless the prescribing physician provides justification in
24 writing explaining the medical necessity for the name-brand drug product. The
25 department, by regulation, shall establish a preferred drug list and a procedure for
26 establishing medical necessity to depart from the list and to use a name-brand drug
27 product. In this subsection, "generic drug product" has the meaning given the term
28 "equivalent drug product" in AS 08.80.480.

29 * Sec. 31. AS 23.30 is amended by adding a new section to article 2 to read:

30 **Sec. 23.30.096. Medical rehabilitation caseworker.** (a) Upon request of the
31 employee or the employer, in the exercise of the board's discretion, or after the

1 employee has received medical treatment for more than 60 days, the board shall
2 appoint a medical rehabilitation caseworker to assist the employee in securing prompt
3 medical treatment, medical services, or medical apparatus if required by the nature of
4 the employee's injury or the process of recovery.

5 (b) The board shall

6 (1) maintain a list of qualified medical rehabilitation caseworkers
7 meeting the qualifications established by the board under this section; the list may not
8 include a person or firm that received more than 15 percent of the person's annual
9 revenue or income acting as an agent of employers, insurers, or injured employees;
10 revenue or income received by a person or firm for services provided under
11 AS 23.30.041 may not be construed as being received acting as an agent of employers,
12 insurers, or injured employees;

13 (2) appoint medical rehabilitation caseworkers on a rotating and
14 geographic basis from its list maintained under this section;

15 (3) within five days after the appointment of a medical rehabilitation
16 caseworker, serve the employer and employee with written notice of its appointment
17 of the medical rehabilitation caseworker; and

18 (4) enforce the quality, effectiveness, and impartiality of medical
19 rehabilitation caseworkers to determine the medical rehabilitation caseworker's
20 continued eligibility for delivery of medical rehabilitation caseworker services in each
21 case and continued eligibility to be on the board's medical rehabilitation caseworker
22 list.

23 (c) If the employer or employee disagrees with the medical rehabilitation
24 caseworker appointed, either party may file a written notice of objection to the
25 medical rehabilitation caseworker appointment. The employer and employee each
26 shall have one right of refusal of a medical rehabilitation caseworker. If the board
27 receives a written notice of medical rehabilitation caseworker objection, the board
28 shall appoint a new caseworker from its list.

29 (d) The appointed medical rehabilitation caseworker shall

30 (1) be impartial and not favor the employee or employer in performing
31 services under this section;

1 (2) file a written report with the board every 30 days summarizing all
2 actions and services provided in a case; the report must detail all contacts the
3 caseworker has had with medical providers regarding the employee and all contacts
4 with agents or legal representatives of the employee, employer, or insurer; and

5 (3) serve copies of the reports to the board, the employer, the
6 employee, and the employee's designated attending physician.

7 (e) The appointed medical rehabilitation caseworker may not interfere with the
8 selection by an employee of an authorized physician to treat the employee or influence
9 or attempt to influence a medical opinion of a medical provider who has treated or
10 examined the employee. A medical rehabilitation caseworker does not violate this
11 subsection by

12 (1) corresponding with a physician who has treated the employee
13 regarding the physician's medical opinions or treatment if the medical rehabilitation
14 caseworker serves the employee with a contemporaneous copy of the correspondence
15 and any reply the medical rehabilitation caseworker receives from the physician;

16 (2) conferring with a physician who has treated or evaluated the
17 employee regarding the physician's medical opinions, treatment of the employee, or
18 the employee's medical history if the medical rehabilitation caseworker serves the
19 employee with written notice not less than five days before the conference and advises
20 the employee of the right to be present during the physician conference.

21 (f) Nothing in this section may be interpreted as limiting or abrogating the
22 employee's right to be examined, receive medical treatment, or consult with the
23 employee's physician or other medical provider in private.

24 * **Sec. 32.** AS 23.30 is amended by adding a new section to article 2 to read:

25 **Sec. 23.30.097. Fees for medical treatment and services.** (a) All fees and
26 other charges for medical treatment or service are subject to regulation by the board
27 consistent with this section. A fee or other charge for medical treatment or service
28 may not exceed the lesser of

29 (1) the usual, customary, and reasonable fees for the treatment or
30 service in the community in which it is rendered, not to exceed the fees in the fee
31 schedule specified by the board in its published bulletin dated December 1, 2004;

1 (2) the usual, customary, and reasonable fees for the treatment or
2 service in the community in which it is rendered as determined by the board;

3 (3) the fee or charge for the service when provided to the general
4 public; or

5 (4) the fee or charge negotiated by the provider and the employer
6 under (c) of this section.

7 (b) An employer, or group of employers, shall establish a list of preferred
8 physicians and treatment service providers to provide medical, surgical, and other
9 attendance or treatment services to the employer's employees under this chapter;
10 however,

11 (1) the employee's right to choose the employee's attending physician
12 under AS 23.30.095(a) is not impaired;

13 (2) when given to the employee, the employer's preferred physician list
14 must clearly state that the list is voluntary, that the employee's choice is not restricted
15 to the list, that the employee's rights under this chapter are not impaired by choosing
16 an attending physician from the list, and that, if the employee chooses an attending
17 physician from the list, the employee may, in the manner provided in AS 23.30.095,
18 make one change of attending physician, from the list or otherwise; and

19 (3) establishment of a list of preferred physicians does not affect the
20 employer's choice of physician for an employer medical examination under
21 AS 23.30.095.

22 (c) An employer, or group of employers, may negotiate with physicians and
23 other treatment service providers under this chapter to obtain reduced fees and service
24 charges and may take the fees and charges into account when forming a list of
25 preferred physicians and providers. In no event may an employer, or group of
26 employers, attempt to influence the treatment, medical decisions, or ratings by the
27 physicians in the course of the negotiations of such a preferred physician and provider
28 fee plans.

29 (d) An employer shall pay an employee's bills for medical treatment under this
30 chapter, excluding prescription charges or transportation for medical treatment, within
31 30 days after the date that the employer receives the provider's bill or a completed

1 report as required by AS 23.30.095(c), whichever is later.

2 (e) A physician or other provider of treatment services under this chapter,
3 including hospital services, that submits a bill for medical treatment to the insurer or
4 self-insured employer shall also submit a copy of the bill to the employee to whom the
5 treatment was provided. An employee who notifies the insurer or self-insured
6 employer's adjuster in writing of an overcharge in the bill that was not previously
7 identified by the insurer or self-insured employer's adjuster shall be entitled to a
8 reward equal to 25 percent of the billing reduction or reimbursement achieved due to
9 the employee's report. This reward does not apply to overcharges of an amount under
10 \$100 if the insurer or self-insured employer's adjuster elects not to pursue correction
11 of the bill.

12 (f) An employee may not be required to pay a fee or charge for medical
13 treatment or service provided under this chapter.

14 (g) Unless the employer controverts a charge, the employer shall reimburse an
15 employee's prescription charges under this chapter within 30 days after the employer
16 receives the health care provider's completed report and an itemization of the
17 prescription charges for the employee. Unless the employer controverts a charge, an
18 employer shall reimburse any transportation expenses for medical treatment under this
19 chapter within 30 days after the employer receives the health care provider's
20 completed report and an itemization of the dates, destination, and transportation
21 expenses for each date of travel for medical treatment. If the employer does not plan
22 to make or does not make payment or reimbursement in full as required by this
23 subsection, the employer shall notify the employee and the employee's health care
24 provider in writing that payment will not be made timely and the reason for the
25 nonpayment. The notification must be provided not later than the date that the
26 payment is due under this subsection.

27 * Sec. 33. AS 23.30.100(b) is amended to read:

28 (b) The notice must be in writing, contain the name and address of the
29 employee, [AND] a statement of the time, place, nature, and cause of the injury or
30 death, and authority to release records of medical treatment for the injury or
31 death, and be signed by the employee or by a person on behalf of the employee, or, in

1 case of death, by a person claiming to be entitled to compensation for the death or by a
2 person on behalf of that person.

3 * Sec. 34. AS 23.30.107 is amended to read:

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

14 (b) Medical or rehabilitation records in an employee's file maintained by the
15 division and individually identifiable information concerning employees and
16 employers in files maintained by the division [BOARD] are not public records
17 subject to public inspection and copying under AS 40.25. This subsection does not
18 prohibit

19 (1) the reemployment benefits administrator, the division, the board,
20 or the department from releasing medical or rehabilitation records in an employee's
21 file, or releasing individually identifiable information concerning employees and
22 employers in files maintained by the division, without the employee's or the
23 employer's consent, to a physician providing medical services under AS 23.30.095(k)
24 or 23.30.110(g), a party to a claim filed by the employee, or a governmental agency;
25 [OR]

26 (2) the quoting or discussing of [MEDICAL OR REHABILITATION]
27 records contained in an employee's file during a hearing on a claim for compensation,
28 in a determination by the reemployment benefits administrator, or in a decision
29 and order of the board; or

30 (3) the division from confirming the insurance coverage or self-
31 insurance certificate for liabilities of an employer under this chapter.

1 * Sec. 35. AS 23.30.107 is amended by adding a new subsection to read:

2 (c) The division may not assemble, or provide information respecting,
3 individual records for commercial purposes that are outside the scope of this chapter.

4 * Sec. 36. AS 23.30.140 is amended to read:

5 **Sec. 23.30.140. Appointment of guardian by court.** The director
6 [BOARD] may require the appointment of a guardian or other representative by a
7 competent court for any person who is mentally incompetent or a minor to receive
8 compensation payable to the person under this chapter and to exercise the powers
9 granted to or to perform the duties required of the person under this chapter. If the
10 director [BOARD] does not require the appointment of a guardian to receive the
11 compensation of a minor, appointment for this purpose is not necessary.

12 * Sec. 37. 23.30.145(b) is amended to read:

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

20 * Sec. 38. AS 23.30.155(a) is amended to read:

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

- 25 (1) that the right of the employee to compensation is controverted;
26 (2) the name of the employee;
27 (3) the name of the employer;
28 (4) the date of the alleged injury or death; and
29 (5) the type of compensation and all grounds upon which the right to
30 compensation is controverted.

31 * Sec. 39. AS 23.30.155(c) is amended to read:

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

21 * **Sec. 40.** AS 23.30.155(d) is amended to read:

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

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

5 * Sec. 41. AS 23.30.155(e) is amended to read:

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

15 * Sec. 42. 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 the unpaid installment. The additional amount [IT,
19 WHICH] shall be paid at the same time as, but in addition to, the compensation, unless
20 review of the compensation order making the award is had as provided in the Alaska
21 Rules of Appellate Procedure [AS 23.30.125] and an interlocutory injunction staying
22 payments is allowed by the court. The additional amount shall be paid directly to
23 the recipient to whom the unpaid compensation was to be paid.

24 * Sec. 43. AS 23.30.155(i) is amended to read:

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

29 * Sec. 44. AS 23.30.155(k) is amended to read:

30 (k) An injured employee [,] or, in case of death, the employee's dependents or
31 personal representative [,] shall give receipts for payment of compensation to the

1 employer paying the compensation, [IT] and the employer shall produce the receipts
2 [THEM] for inspection by the director [BOARD], whenever required.

3 * Sec. 45. AS 23.30.155(m) is amended to read:

4 (m) On or before March 1 of each year, the insurer or adjuster shall file a
5 verified annual report on a form prescribed by the director [BOARD] stating the total
6 amount of all compensation by type, the number of claims received and the percentage
7 controverted, medical [,] and related benefits, vocational rehabilitation expenses, legal
8 fees, including a separate total of fees paid to attorneys and fees paid for the other
9 costs of litigation, and penalties paid on all claim during the preceding calendar year.
10 If the annual report is timely and complete when received by the division [BOARD]
11 and provides accurate information about each category of payments, the director
12 [COMMISSIONER] shall review the timeliness of the insurer's or adjuster's reports
13 filed during the preceding year under (c) of this section. If, during the preceding year,
14 the insurer or adjuster filed at least 99 percent of the reports on time, the penalties
15 assessed under (c) of this section shall be waived. If, during the preceding year, the
16 insurer or adjuster filed at least 97 percent of the reports on time, 75 percent of the
17 penalties assessed under (c) of this section shall be waived. If, during the preceding
18 year, the insurer or adjuster filed 95 percent of the reports on time, 50 percent of the
19 penalties assessed under (c) of this section shall be waived. If, during the preceding
20 year, the insurer's or adjuster's reports have not been filed on time at least 95 percent
21 of the time, none of the penalties assessed under (c) of this section shall be waived.
22 The penalties that are not waived are due and payable when the insurer or adjuster
23 receives notification from the director [COMMISSIONER] regarding the timeliness
24 of the reports. If the annual report is not filed by March 1 of each year, the insurer or
25 adjuster shall pay a civil penalty of \$100 for the first day the annual report is late [,]
26 and \$10 for each additional day the report is late. If the annual report is incomplete
27 when filed, the insurer or adjuster shall pay a civil penalty of \$1,000.

28 * Sec. 46. AS 23.30.155(o) is amended to read:

29 (o) The director [BOARD] shall promptly notify the division of insurance if
30 the board determines that the employer's insurer has frivolously or unfairly
31 controverted compensation due under this chapter. After receiving notice from the

1 director [BOARD], the division of insurance shall determine if the insurer has
2 committed an unfair claim settlement practice under AS 21.36.125.

3 * Sec. 47. AS 23.30.175(b) is amended to read:

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

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

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

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

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

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

23 * Sec. 48. AS 23.30.175(c) is amended to read:

24 (c) The department [BOARD] shall provide by regulation for the
25 determination and comparison of living costs for this state and the other areas in which
26 recipients reside and for the [ANNUAL] redetermination and comparison of these
27 costs every three years.

28 * S c. 49. AS 23.30.175 is amended by adding a new subsection to read:

29 (e) If the commissioner fails to determine the average weekly wage in the state
30 as required in (d) of this section until after January 1, but before April 1, of the year
31 following the date the determination was to be made, an employer is not required to

1 make a retroactive adjustment of compensation.

2 * Sec. 50. AS 23.30.205(e) is amended to read:

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

8 * Sec. 51. AS 23.30.205 is amended by adding a new subsection to read:

9 (g) Claims for reimbursement may not be submitted to the second injury fund
10 after September 1, 2005. The fund shall continue to make reimbursement payments
11 on claims accepted before July 1, 2006, or ordered by the board, until the fund's
12 liabilities for the claim are extinguished.

13 * Sec. 52. AS 23.30.220(a) is amended to read:

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

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

20 (2) if at the time of injury the employee's earnings are calculated by the
21 month, the employee's gross weekly earnings are the monthly earnings multiplied by
22 12 and divided by 52;

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

25 (4) if at the time of injury the [(A)] employee's earnings are calculated
26 by the day, by the hour, or by the output of the employee, then the employee's gross
27 weekly earnings are 1/50 of the total wages that the employee earned from all
28 occupations during either of the two calendar years immediately preceding the
29 injury, whichever is [THE EMPLOYEE'S EARNINGS] most favorable to the
30 employee [COMPUTED BY DIVIDING BY 13 THE EMPLOYEE'S EARNINGS,
31 INCLUDING OVERTIME OR PREMIUM PAY, EARNED DURING ANY PERIOD

1 OF 13 CONSECUTIVE CALENDAR WEEKS WITHIN THE 52 WEEKS
2 IMMEDIATELY PRECEDING THE INJURY;

3 (B) EMPLOYEE HAS BEEN EMPLOYED FOR LESS THAN
4 13 CALENDAR WEEKS IMMEDIATELY PRECEDING THE INJURY,
5 THEN, NOTWITHSTANDING (1) - (3) OF THIS SUBSECTION AND (A)
6 OF THIS PARAGRAPH, THE EMPLOYEE'S GROSS WEEKLY
7 EARNINGS ARE COMPUTED BY DETERMINING THE AMOUNT THAT
8 THE EMPLOYEE WOULD HAVE EARNED, INCLUDING OVERTIME
9 OR PREMIUM PAY, HAD THE EMPLOYEE BEEN EMPLOYED BY THE
10 EMPLOYER FOR 13 CALENDAR WEEKS IMMEDIATELY PRECEDING
11 THE INJURY AND DIVIDING THIS SUM BY 13];

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

16 (6) if at the time of injury the employee's earnings are calculated by
17 the week under (a)(1) of this section or by the month under (a)(2) of this section
18 and the employment is exclusively seasonal or temporary, then [,
19 NOTWITHSTANDING (1) - (5) OF THIS SUBSECTION,] the gross weekly
20 earnings are 1/50 of the total wages that the employee has earned from all occupations
21 during the 12 calendar months immediately preceding the injury;

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

25 (8) if an employee when injured is a minor, an apprentice, or a trainee
26 in a formalized [FORMAL] training program, as determined by the board, whose
27 wages under normal conditions would increase during the period of disability, the
28 projected increase may be considered by the board in computing the gross weekly
29 earnings of the employee; if the minor, apprentice, or trainee would have likely
30 continued that training program, then the compensation shall be the average
31 weekly wage at the time of injury rather than that based on the individual's prior

1 earnings:

2 (9) if the employee is injured while performing duties as a volunteer
3 ambulance attendant, volunteer police officer, or volunteer fire fighter, then,
4 notwithstanding (1) - (6) of this subsection, the gross weekly earnings for calculating
5 compensation shall be the minimum gross weekly earnings paid a full-time ambulance
6 attendant, police officer, or fire fighter employed in the political subdivision where the
7 injury occurred, or, if the political subdivision has no full-time ambulance attendants,
8 police officers, or fire fighters, at a reasonable figure previously set by the political
9 subdivision to make this determination, but in no case may the gross weekly earnings
10 for calculating compensation be less than the minimum wage computed on the basis of
11 40 hours work per week;

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

19 * Sec. 53. AS 23.30.240 is amended to read:

20 **Sec. 23.30.240. Officers of corporations, municipal corporations and**
21 **nonprofit corporations and members of limited liability companies as employees.**

22 An executive officer elected or appointed and empowered in accordance with the
23 charter and bylaws of a corporation, other than an official of a municipal corporation
24 or a charitable, religious, educational, or other nonprofit corporation, is an employee
25 of the corporation under this chapter. However, an executive officer of a corporation
26 may waive coverage under this chapter, subject to the approval of the director
27 [COMMISSIONER OF LABOR AND WORKFORCE DEVELOPMENT],
28 notwithstanding AS 23.30.245(b). Notwithstanding any other provision of this
29 chapter, an executive officer of a municipal corporation or of a charitable, religious,
30 educational, or other nonprofit corporation may be brought within the coverage of its
31 insurance contract by the corporation by specifically including the officer in the

1 contract of insurance. The election to bring an executive officer within the coverage
2 continues in force for the period the contract of insurance is in effect. During that
3 period, an executive officer brought within the coverage of the insurance contract is an
4 employee of the corporation under this chapter.

5 * Sec. 54. AS 23.30.240 is amended by adding a new subsection to read:

6 (b) Except as provided in this subsection, a member of a limited liability
7 company organized under AS 10.50 is not an employee of the company under this
8 chapter. Notwithstanding any other provision of this chapter, a limited liability
9 company may bring a member of the company within the coverage of the company's
10 insurance contract by specifically including the member in the contract of insurance.
11 The election to bring the member within the company's coverage continues in force
12 for the period the contract of insurance is in effect. During that period, a member
13 brought within the coverage of the insurance contract is an employee of the company
14 under this chapter.

15 * Sec. 55. AS 23.30.247(c) is amended to read:

16 (c) This section may not be construed to prohibit an employer from requiring a
17 prospective employee to fill out a preemployment questionnaire or application
18 regarding the person's prior health or disability history as long as it is meant to
19 [EITHER DOCUMENT WRITTEN NOTICE FOR SECOND INJURY FUND
20 REIMBURSEMENT UNDER AS 23.30.205(c) OR] determine whether the employee
21 has the physical or mental capacity to meet the documented physical or mental
22 demands of the work.

23 * Sec. 56. AS 23.30.250 is amended to read:

24 **Sec. 23.30.250. Penalties for fraudulent or misleading acts.** (a) A person,
25 including an employee, an employer, a representative of a person, a physician, a
26 medical provider, or any entity who (1) knowingly makes a false or misleading
27 statement, representation, or submission related to a benefit under this chapter; (2)
28 knowingly assists, abets, solicits, or conspires in making a false or misleading
29 submission affecting the payment, coverage, or other benefit under this chapter; (3)
30 knowingly misclassifies employees or engages in deceptive leasing practices for the
31 purpose of evading full payment of workers' compensation insurance premiums; or (4)

1 employs or contracts with a person or firm to coerce or encourage an individual to file
2 a fraudulent compensation claim is civilly liable to a person adversely affected by the
3 conduct, is guilty of theft by deception as defined in AS 11.46.180, and may be
4 punished as provided by AS 11.46.120 - 11.46.150.

5 (b) If the board, after a hearing, finds that a person has obtained compensation,
6 medical treatment, or another benefit provided under this chapter, or that a provider
7 has received a payment, by knowingly making a false or misleading statement or
8 representation for the purpose of obtaining that benefit, the board shall order that
9 person to make full reimbursement of the cost of all benefits obtained. Upon entry of
10 an order authorized under this subsection, the board shall also order that person to pay
11 all reasonable costs and attorney fees incurred by the employer and the employer's
12 carrier in obtaining an order under this section and in defending any claim made for
13 benefits under this chapter. If a person fails to comply with an order of the board
14 requiring reimbursement of compensation and payment of costs and attorney fees, the
15 employer may declare the person in default and proceed to collect any sum due as
16 provided under AS 23.30.170(b) and (c).

17 * Sec. 57. AS 23.30.250 is amended by adding a new subsection to read:

18 (c) A court may provide compensatory damages, punitive damages, and
19 attorney fees to an adversely affected party in a civil action under (a) of this section or
20 the enforcement of an order under (b) of this section.

21 * Sec. 58. AS 23.30.260 is amended to read:

22 **Sec. 23.30.260. Penalty for receiving unapproved fees and soliciting.** A
23 person is guilty of a misdemeanor [,] and, upon conviction, is punishable for each
24 offense by a fine of not more than \$1,000 [,] or by imprisonment for not more than one
25 year, or by both, if the person

26 (1) receives a fee, other consideration, or a gratuity on account of any
27 services rendered for representation or advice with [IN] respect to a claim, unless
28 the consideration or gratuity is approved by the board or the court; or

29 (2) makes it a business to solicit employment for a lawyer or for the
30 person making the solicitation with [ONESELF IN] respect to a claim or award for
31 compensation.

1 * **Sec. 59.** AS 23.30.260 is amended by adding a new subsection to read:

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

6 * **Sec. 60.** AS 23.30 is amended by adding a new section to read:

7 **Sec. 23.30.280. Investigation of fraud; staffing.** (a) The director shall
8 establish a section within the division for the investigation of fraudulent or misleading
9 acts under AS 23.30.250 and other fraudulent acts relating to workers' compensation.

10 (b) The director shall establish a toll-free fraud hotline to receive calls relating
11 to fraudulent or misleading acts under this chapter. The director shall publicize the
12 availability of the toll-free fraud hotline and encourage the public to provide
13 information to the division relating to fraudulent or misleading acts relating to
14 workers' compensation.

15 (c) The section established by the director under (a) of this section shall
16 include not less than two full-time investigators with the primary responsibility of
17 investigating fraudulent or misleading acts relating to workers' compensation. The
18 director shall also ensure that there are sufficient personnel to staff the toll-free fraud
19 hotline established under (b) of this section.

20 * **Sec. 61.** AS 23.30.395 is amended by adding new paragraphs to read:

21 (35) "commissioner" means the commissioner of labor and workforce
22 development;

23 (36) "department" means the Department of Labor and Workforce
24 Development;

25 (37) "director" means the director of the division of workers'
26 compensation in the department;

27 (38) "division" means the division of workers' compensation in the
28 department;

29 (39) "medical rehabilitation caseworker" means a person who is a
30 registered nurse, certified rehabilitation counselor, or other person who has equivalent
31 or better qualification, as determined under regulations adopted by the board.

1 * **Sec. 62.** AS 37.05.146(c) is amended by adding a new paragraph to read:

2 (78) workers' compensation benefits guaranty fund (AS 23.30.082).

3 * **Sec. 63.** 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. 64.** AS 44.23.020 is amended by adding a new subsection to read:

7 (f) The attorney general shall designate not less than one-half attorney position
8 in the Department of Law for the purpose of prosecuting actions for fraudulent acts
9 related to workers' compensation under AS 23.30.

10 * **Sec. 65.** AS 23.30.015(c), 23.30.040, 23.30.205, 23.30.395(27); and AS 37.05.146(c)(12)
11 are repealed.

12 * **Sec. 66.** The uncodified law of the State of Alaska is amended by adding a new section to
13 read:

14 **TASK FORCE ON WORKERS' COMPENSATION.** (a) There is established in the
15 legislative branch the Task Force on Workers' Compensation to address the improvement of
16 the Alaska workers' compensation system, including

17 (1) a review of workers' compensation and insurance reform measures
18 throughout the United States and an assessment of the effects of those reforms;

19 (2) an analysis and assessment of proposals for workers' compensation and
20 workers' compensation liability insurance reform in Alaska;

21 (3) a review of current Alaska workers' compensation benefits and costs and
22 an assessment of needed changes, including the effect on businesses that employ fewer than
23 100 employees and the costs and benefits of palliative care;

24 (4) a review of compliance with current Alaska workers' compensation laws;

25 (5) a review of the cost of claims and other cost drivers that affect workers'
26 compensation insurance;

27 (6) a consideration of other issues determined to be relevant by members of
28 the task force.

29 (b) The task force established under (a) of the section shall consist of 13 voting
30 members. One member shall be a state senator appointed by the president of the senate, one
31 member shall be a state representative appointed by the speaker of the house of

1 representatives, and one member shall be a member of the minority in either house jointly
2 selected by the president of the senate and the speaker of the house of representatives. Ten
3 members shall be appointed jointly by the president of the senate and speaker of the house of
4 representatives as follows:

- 5 (1) a representative of the Alaska State Medical Association;
- 6 (2) a representative of the Alaska Chiropractic Society;
- 7 (3) a rehabilitation specialist, as defined in AS 23.30.041;
- 8 (4) an attorney who represents employees in workers' compensation cases;
- 9 (5) an attorney who represents employers in workers' compensation cases;
- 10 (6) a representative of the insurance industry that provides workers'
11 compensation insurance;
- 12 (7) a representative from organized labor;
- 13 (8) a person representing employees not represented by organized labor;
- 14 (9) a person representing small businesses; and
- 15 (10) a person representing larger businesses.

16 (c) The task force established under (a) of this section

17 (1) may begin work immediately upon the appointment of its full voting
18 membership and shall meet as often as required to meet the objectives established in this
19 section;

- 20 (2) shall elect a chair of the task force from among its members;
- 21 (3) shall hold public hearings and may perform research related to its work;
- 22 (4) may meet in the interim and vote telephonically;
- 23 (5) shall report its written findings and give a copy of proposed legislation and
24 other recommendations to the president of the senate and the speaker of the house of
25 representatives before December 1, 2006; and

26 (6) is terminated on February 1, 2007.

27 (d) Members of the task force who are not state employees are not entitled to per diem
28 under AS 39.20.180.

29 (e) The president of the senate and the speaker of the house of representatives shall
30 jointly appoint a staff member to provide administrative support to the task force.

31 * Sec. 67. The uncodified law of the State of Alaska is amended by adding a new section to

1 read:

2 APPLICABILITY. The amendment to AS 23.30.175(b) made by sec. 47 of this Act
3 applies to an injury occurring on or after the effective date of sec. 47 of this Act.

4 * Sec. 68. The uncodified law of the State of Alaska is amended by adding a new section to
5 read:

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

10 (b) Certificates, decisions, and orders issued under authority of a law amended or
11 repealed by this Act remain in effect for the term issued, or until revoked, vacated, or
12 otherwise modified under the provisions of this Act. Contracts, rights, liabilities, and
13 obligations created by or under a law amended or repealed by this Act and in effect on the day
14 before the effective date of this section remain in effect, notwithstanding this Act's taking
15 effect.

16 * Sec. 69. The uncodified law of the State of Alaska is amended by adding a new section to
17 read:

18 TRANSITION: REGULATIONS. The Department of Labor and Workforce
19 Development and the director of insurance in the Department of Commerce, Community, and
20 Economic Development each may proceed to adopt regulations necessary to implement their
21 respective provisions of this Act. The regulations take effect under AS 44.62 (Administrative
22 Procedure Act), but not before the effective date of the statutory changes.

23 * Sec. 70. The uncodified law of the State of Alaska is amended by adding a new section to
24 read:

25 IMPLEMENTATION OF REPEAL OF SECOND INJURY FUND. (a) The balance
26 of the second injury fund created by former AS 23.30.040 is transferred to the workers' safety
27 and compensation administration account (AS 23.05.067) on the effective date of this section.
28 The amount transferred under this subsection shall be accounted for separately within the
29 workers' safety and compensation administration account. The Task Force on Workers'
30 Compensation established in sec. 66 of this Act shall make recommendations in its report
31 regarding the use of these funds.

1 (b) Notwithstanding the repeal of AS 23.30.040, all expenses incurred by the
2 employer as described under AS 23.30.015(e)(1), as amended by sec. 8 of this Act, shall
3 continue to be open to recovery from third parties under AS 23.30.015 until such liabilities are
4 recovered, settled, or legally expire.

5 * **Sec. 71.** The uncodified law of the State of Alaska is amended by adding a new section to
6 read:

7 **TRANSITION: MEDICAL SERVICES REVIEW COMMITTEE STUDY,**
8 **REPORTS, AND RECOMMENDATIONS.** (a) The medical services review committee
9 appointed under AS 23.30.095(j) shall proceed to study medical and related benefits provided
10 under AS 23.30 to determine the appropriateness, necessity, and cost of the benefits and shall,
11 by May 15, 2006, provide to the commissioner of labor and workforce development a report
12 of the results of the study.

13 (b) The medical services review committee appointed under AS 23.30.095(j) shall
14 assist the Task Force on Workers' Compensation established in sec. 66 of this Act and make
15 recommendations for medical procedure guidelines to the task force, not later than May 15,
16 2006, that may be included in the written findings and proposed legislation under sec.
17 66(c)(5) of this Act.

18 * **Sec. 72.** Sections 29, 66, and 69 of this Act take effect immediately under
19 AS 01.10.070(c).

20 * **Sec. 73.** Sections 1, 2, 47, and 71 of this Act take effect September 1, 2005.

21 * **Sec. 74.** Sections 3, 8, 55, 65, and 70 of this Act take effect on the date that the
22 commissioner of labor and workforce development certifies to the revisor of statutes and the
23 lieutenant governor that all liability for previously accepted claims to the second injury fund
24 created by former AS 23.30.040, and claims ordered to be paid from that fund, have been
25 satisfied.

26 * **Sec. 75.** Except as provided in secs. 72 - 74 of this Act, this Act takes effect August 1,
27 2005.

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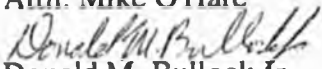
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MEMORANDUM

May 2, 2005

SUBJECT: Sectional analysis for HCS CSSB 130()
(Work Order No. 24-GS1112I)

TO: Representative Pete Kott
Attn: Mike O'Hare

FROM: 
Donald M. Bullock Jr.
Legislative Counsel

You have requested a sectional summary of the above-described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1. Adds a new subsection to AS 21.24.130 to provide the procedures to be followed by the director of the division of insurance that relate to the deposit of an insurer made under AS 21.09.090(e); provides for the director to release the deposit assets to the Alaska Insurance Guaranty Association and to other persons who succeed to the management of the insolvent insurer's assets after the director determines that all loss and loss expense liabilities have been paid.

Section 2. Amends AS 21.39.155(a) by removing limitations relating to a reciprocal insurer that may be required to participate in an assigned risk pool.

Section 3. Amends AS 23.05.067(a) by removing a reference to second injury fund payments.

Section 4. Amends AS 23.30.005(a) by increasing the number of workers' compensation board panels; provides for a hearing officer to be the designated representative of the commissioner of labor and workforce development on a panel; and requires the board to adopt, by regulation, procedures to avoid conflicts and the appearance of impropriety in hearings.

Section 5. Amends AS 23.30.005(b) to allow the commissioner of labor and workforce development to designate a representative to act on behalf of the commissioner as chair and executive officer of the board, and to serve as the chair of a panel hearing a claim.

Section 6. Amends AS 23.30.005(h) to allow the Department of Labor and Workforce Development to adopt regulations that provide for the commissioner, or the commissioner's designee, to hear and decide procedural, discovery, or stipulated matters rather than to have those matters heard by a panel; provides that the decision by the commissioner or the commissioner's designee is considered to be the action of the board.

Section 7. Amends AS 23.30.012 to transfer board authority to the director and the division of workers' compensation to accept the filing of an agreement to discharge the liability of an employer; makes the agreement enforceable as a compensation order; however, a panel of the board is required to review an agreement if the claimant is not represented by an attorney, is a minor or incompetent, or is waiving future medical benefits; allows for the approval of a lump-sum settlement.

Section 8. Amends AS 23.30.015(e) to remove a reference to the second injury fund.

Section 9. Amends AS 23.30.015(j) to provide that notice of the commencement of an action be given to the division rather than the board.

Section 10. Amends AS 23.30.025(a) to transfer responsibility for the receipt of an insurance policy form filing from the board to the division of workers' compensation.

Section 11. Amends AS 23.30.030(5) to require that a notice of insurance termination be filed with the division of workers' compensation rather than the board.

Section 12. Amends AS 23.30.041(a) to transfer responsibilities relating to a reemployment benefits administrator from the board to the director of the division of workers' compensation.

Section 13. Amends AS 23.30.041(b) by adding additional items to the administrator's report that relate to individuals participating or not participating in a rehabilitation plan and the status of individuals who successfully complete a reemployment plan.

Section 14. Amends AS 23.30.041(j) to make non-substantive grammatical changes.

Section 15. Amends AS 23.30.041(k) by adding a reference to permanent partial impairment; refers to a reemployment "process" rather than a reemployment "plan."

Section 16. Amends AS 23.30.041(n) to increase the period for an employee to give an employer the employee's choice of a rehabilitation specialist from 15 to 30 days.

Section 17. Amends AS 23.30.041(p) to transfer responsibility from the board to the director of the division of workers' compensation and to the Department Of Labor and Workforce Development relating changes in the "Selected Characteristics of Occupations Defined in the Revised Dictionary of Occupational Titles," published by the United States Department of Labor.

Section 18. Amends AS 23.30.041(q) to transfer responsibilities from the board to the director and the division of workers' compensation relating to a waiver of benefits and rights by an employee.

Section 19. Amends AS 23.30.065 to transfer responsibilities relating to an employer's record of injury from the board to the division of workers' compensation and the Department of Labor and Workforce Development.

Sections 20, 21, and 22. Amend AS 23.30.070(a), (b), and (d) by transferring responsibilities relating to the report of the injury or death of an employee from the board to the division of workers' compensation.

Section 23. Amends AS 23.30.075 by transferring responsibilities relating to an employer's liability to pay from the board to the division of workers' compensation.

Section 24. Amends AS 23.30.080(d) by transferring responsibilities relating to an employer's failure to insure or provide security from the board to the division of workers' compensation.

Section 25. Amends AS 23.30.080 by adding new subsections relating to an employer's failure to insure or provide security; authorizes the director to issue a stop order; provides for the enforcement of a stop order and provides for a civil penalty of \$1,000 per day; bars an employer who is penalized from obtaining a public contract for three years; provides for the board to assess additional penalties of \$1,000 for each employee for each day; provides for the entry of judgment by a court for the amount of a penalty that is not paid; authorizes the attorney general to take action to ensure collection of the default payment.

Section 26. Adds a new section, AS 23.30.082, that establishes the workers' compensation benefits guaranty fund; provides for the deposit of civil penalties and other money and appropriations into the fund; allows for appropriations from the fund for claims against the fund and for expenses related to fund operations and claims, legal expenses, and the legal expenses of an employee; requires the Department of Revenue to report actions relating to the fund to the division of workers' compensation; provides for an eligible employee to file a claim for payment by the fund; provides that the fund is subrogated to the rights of the employee to the amount paid; provides that payments from the fund may be delayed when there is insufficient money in the fund and that interest may not be added; authorizes the division of workers' compensation to contract with a person to adjust claims against the fund.

Section 27. Amends AS 23.30.085(a) by transferring responsibilities from the board to the director and the division of workers' compensation that relate to evidence of compliance with insurance provisions.

Section 28. Amends AS 23.30.095(h) by transferring responsibilities from the board to the director and the division of workers' compensation that relate to the filing of a claim or other pleading and the submission of reports by physicians.

Section 29. Amends AS 23.30.095(j) by eliminating the option of contracting and providing for the appointment of a seven member medical services review committee; the seven members include: one rehabilitation specialist, one public member, one chiropractic physician, and four health care providers who are not chiropractors.

Section 30. Amends AS 23.30.095 by adding a new subsection to require the dispensing of a generic drug unless the prescribing physician justifies the use of the name-brand product; authorizes the department to establish a preferred drug list and a procedure for departing from the list; defines "generic drug product."

Section 31. Adds a new section, AS 23.30.096, that authorizes the appointment of a medical rehabilitation caseworker; requires the board to maintain a list of qualified medical rehabilitation caseworkers and requires the board to determine the qualifications; allows for an objection to the appointed medical rehabilitation caseworker; states the responsibilities for a medical rehabilitation caseworker.

Section 32. Adds a new section, AS 23.30.097, that authorizes the board to regulate all fees and charges for medical treatment and services; limits a fee or other charge to the lesser of four options, including fees specified by the board in its December, 2004 bulletin; allows an employer or employers to negotiate to obtain reduced fees and charges; prohibits an employer from influencing or attempting to influence the treatment, or medical decisions by a physician in the course of negotiating reduced fees and charges; requires the payment of an employee's medical bills within 30 days; requires a provider of treatment to provide the employee with a copy of all charges and provides for a reward to an employee who reports certain overcharges; states that the employee may not be required to pay for medical treatment; provides for reimbursement of an employee's prescription and transportation charges within 30 days; provides for notice to the employee and health care provider if the employer will not make payment.

Section 33. Amends AS 23.30.100(b) by requiring an employee or a person on behalf of the employee to release medical treatment records.

Section 34. Amends AS 23.30.107 relating to files that contain individually identifiable information relating to employees and employers; transfers responsibilities for records from the board to the division of workers' compensation.

Section 35. Adds AS 23.30.107(n) to prohibit the division of workers' compensation from using individual records for commercial purposes.

Section 36. Amends AS 23.30.140 by transferring responsibilities from the board to the director of the division of workers' compensation that relate to the appointment of a guardian.

Section 37. Amends AS 23.30.145(b) to refer to reasonable attorney fees.

Sections 38, 39, 40, 43, 45, and 46. Amend AS 23.30.155 by transferring responsibilities from the board to the division of workers' compensation and the Department of Labor and Workforce Development relating to the payment of compensation.

Section 41. Amends AS 23.30.155(e) by providing that the amount added to an unpaid installment payable without an award shall be paid directly to the person to whom the installment was to be paid.

Section 42. Amends AS 23.30.155(f) by requiring the amount added to unpaid compensation under an award shall be paid directly to the person to whom the payment was to be made; provides an exception to the additional amount under the Alaska Rules of Appellate Procedure.

Section 44. Amends AS 23.30.155(k) by clarifying language relating to receipts for compensation paid.

Section 47. Amends AS 23.30.175(b) to prohibit the compensation rate for a person not residing in the state from exceeding the rate the person would have received if residing in the state.

Section 48. Amends AS 23.30.175(c) to transfer responsibilities from the board to the Department of Labor and Workforce Development relating to the determination and comparison of living costs and requiring the report to be done every three years.

Section 49. Adds AS 23.30.175(e) that relieves an employer from making a retroactive adjustment of compensation if the commissioner of labor and workforce development fails to timely determine the average weekly wage in the state before April 1.

Section 50. Amends AS 23.30.205(e) by transferring a notice requirement from the commissioner of labor and workforce development to the director of the division of workers' compensation.

Section 51. Adds AS 23.30.205(g) to prohibit the submission of claims to the second injury fund after September 1, 2005, and allows the second injury fund to make payments on claims accepted before July 1, 2006, or ordered by the board, until the liabilities for the claim are extinguished.

Section 52. Amends AS 23.20.220(a) by changing the formula for determining an employee's gross weekly earnings; provides that a minor, apprentice, or trainee that would have likely continued a training program to have a compensation calculation based on the average weekly wage at the time of the injury rather than on the individual's prior earnings.

Section 53. Amends AS 23.30.240(a) by transferring the approval responsibility for a waiver of workers' compensation coverage from the commissioner of the Department of Labor and Workforce Development to the director of the division of workers' compensation.

Section 54. Adds AS 23.30.240(b) that states that a member of a limited liability company is not an employee of the company; allows for a limited liability company to bring a member within workers' compensation coverage by including the member in a contract of insurance.

Section 55. Amends AS 23.30.247(c) by removing a reference to the second injury fund.

Section 56. Amends AS 23.30.250, by adding a list of persons that are subject to penalties for fraudulent or misleading acts.

Section 57. Adds AS 23.30.250(c) to allow a court to provide compensatory and punitive damages and attorney fees to an affected party damaged by a fraudulent or misleading act.

Section 58. Amends AS 23.30.260 to clarify the persons and actions subject to the penalty for receiving unapproved fees and soliciting.

Section 59. Adds AS 23.30.260(b) to provide for an exception to the penalty for receiving unapproved fees.

Section 60. Adds a new section, AS 23.30.280, requiring the director of the division of workers' compensation to establish a unit to investigate fraudulent or misleading acts relating to workers' compensation; requires the establishment of a fraud hotline and publicity for the hotline; requires the unit to include at least two full-time investigators and sufficient personnel to staff the hotline.

Section 61. Amends AS 23.30.395 by adding definitions for commissioner, department, director, division, and medical rehabilitation caseworker.

Section 62. Amends AS 37.05.146(c) to include the workers' compensation benefits guaranty fund established under AS 23.30.082 that would be enacted in sec. 26 of the bill.

Section 63. Amends AS 29.25.120(c)(14) to conform with the transfer of responsibilities relating to a rehabilitation administrator from the board to the division of workers' compensation.

Section 64. Adds AS 44.23.020(f) to require the attorney general to designate attorney time for the purpose of prosecuting actions for workers' compensation fraud.

Section 65. Repeals provisions relating to the second injury fund.

Section 66. Adds a section to uncodified law providing for the establishment of the Task Force on Workers' Compensation; lists the duties of the task force; provides for the appointment of 13 voting members, including a member of the senate and a member of the house of representatives, a minority member from either house, and 10 members representing different groups with an interest in workers' compensation issues; requires the task force to submit written findings and proposed legislation to the legislature by December 1, 2006; prohibits per diem for the non-state employee members of the task; provides for a staff person to support the task force; terminates the task force on February 1, 2007.

Section 67. Adds a section to uncodified law stating that the amendment to AS 23.30.175(b), relating to the compensation rate for persons outside of the state, applies to an injury occurring after the effective date of sec. 47 of the bill.

Section 68. Adds a section to uncodified law stating that litigation, investigations, and other proceedings pending under a law amended or repealed in the bill or related to functions transferred to a new entity continue until completed, notwithstanding the enactment of the bill; provides that other rights and obligations created by or under prior law remain in effect.

Section 69. Adds a section to uncodified law authorizing the adoption of regulations to implement the new law by the Department of Labor and Workforce Development and the Department of Commerce, Community, and Economic Development.

Section 70. Adds a section to uncodified law relating to the implementation of the repeal of the second injury fund; transfers the balance of the fund into the workers' safety and compensation administration account; provides for separate accounting of the transferred amount; requires the Task Force on Workers' Compensation to make recommendations regarding the use of the transferred funds; allows for the continued recovery of an employer's expenses under AS 23.30.015(e), 1).

Section 71. Adds a section to uncodified law directing the medical services review committee to proceed to study the necessity and cost of medical and other benefits related to workers' compensation and provide the commissioner of labor and workforce development with a report of its findings by May 15, 2006; requires the medical services review committee to assist the Task Force on Workers' Compensation to make

Representative Pete Kott
May 2, 2005
Page 8

recommendations for medical procedure guidelines to be included in the written findings and proposed legislation to be developed by the Task Force on Workers' Compensation.

Sections 72, 73, 74, and 75. Provide effective dates for different sections of the bill. The bill has special effective dates that require a 2/3 vote in each body in order to take effect.

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Summary Comparison of CSSB 130(FIN) am and Draft HCS 5/1/05

The reforms in HB 180/SB 130 are aimed at lessening the threat to jobs and benefits caused by insurance premiums increasing at intolerable rates. The reforms are consistent with the oft-stated legislative intent of ensuring the quick, efficient, fair, and predictable delivery of income and medical benefits to injured workers at a reasonable cost to their employers. The reforms address six major areas:

PROTECTING WORKERS' BENEFITS AND JOBS

Draft HCS CSSB 130(FIN) am

Sec. 25	Sec. 22	Empower the Division Director to immediately shut down an employer upon completion of an investigation confirming lack of required insurance. (Page 18)
Sec. 25	Sec. 22	Empower the Board to fine uninsured employers up to \$1,000/day/employee. (Pages 18-19)
Sec. 26	Sec. 23	Establish a Benefits Guaranty Fund to receive fines assessed against uninsured employers. Permit the Fund to use those fines to pay benefits to injured workers whose employers were uninsured and fail to pay. Authorize the Fund to pursue reimbursement from the uninsured employer. (Pages 19-20)
NO ?	Sec. 2	Protect benefits payments from an insurer's insolvency by requiring in-state deposits to back the insurer's loss reserves. (Page 3)
Sec. 1	Sec. 3	Release the deposits to the Alaska Insurance Guaranty Association, upon the insurer's insolvency, for payment of benefits to injured workers. (Pages 3-4)
Sec. 66	Sec. 52	Implement a thorough review of the workers' compensation system and potential reforms through appointment of a legislative task force. Task force report, including reform recommendations, due by December 1, 2005. (Pages 38-39)

Thirteen member task force (adds rep of AK Chiropractic Society and a rehabilitation specialist), report with recommendations due before December 1, 2006. Legislative administrative support staff to be appointed.

Summary Comparison of CSSB 130(FIN) am and Draft HCS 5/1/05

QUICKER, MORE EFFICIENT DISPUTE RESOLUTION

Draft HCS CSSB 130(FIN) am

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| Sec. 59 | Sec. 43 | Legalize private attorneys' receipt of a one-time consultation fee up to \$300 to advise injured workers' about benefits matters. (Page 36) |
| NO | Sec. 8 | Allow the Department of Labor & Workforce Development to contract with non-profit organizations to provide information and legal assistance to injured workers unable to obtain private counsel. (Page 5) |
| NO | Sec. 8 | Permit Workers' Compensation Board to delegate authority to Workers' Compensation Division Director by regulation. (Page 5) |
| Sec. 7 | Sec. 10 | Allow injured workers represented by Alaska-licensed attorneys to settle their claims without review by the Workers' Compensation Board. Focus Board review on settlements of workers who are minors, incompetent, or unrepresented by counsel. (Pages 10-11) |

AWCB still must approve all settlements including waivers of medical benefits, even where worker has legal counsel. (Like claimant attorneys' proposal.)

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| Sec. 4 | Sec. 6 | Formally require use of hearing officers and Board adoption of conflict of interest regulations. (Pages 4-5) |
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Also adds three additional AWCB hearing panels (for total of ten). (Like part of Ad Hoc Comm. Sec. 6.)

FAIR BENEFITS AT REASONABLE EMPLOYER COST

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| Sec. 47 | Sec. 34 | Cap non-resident compensation rates at those paid to Alaskan residents. (Pages 29-30) |
| Sec. 48 | Sec. 35 | COLA studies only every three years. |
| NO | Sec. 37 | Coordinate payments of workers' compensation benefits, and disability benefits under a plan to which an employer also contributed, so combined benefits do not exceed the injured worker's take home pay. (Pages 30-32) |

Summary Comparison of CSSB 130(FIN) am and Draft HCS 5/1/05

Draft HCS CSSB 130(FIN) am

NO Sec. 44 Incrementally reduce benefits costs by redefining compensable injuries. Where a work incident aggravates, accelerates, or combines with a preexisting condition, the incident is not a compensable "injury" unless it is "the major contributing cause" of disability or need for medical treatment. (Pages 36-37)

Sec. 56 Sec. 40 Broaden and strengthen anti-fraud provisions enforced by the Board. (Pages 33-36)

Only changes definitions of "person" and "compensation" like Ad Hoc Comm. Sec. 57)

NO Sec. 41 Improve criminal anti-fraud provisions to facilitate effective prosecution. (Page 36)

Sec. 57 Sec. 42 Authorize the courts to award compensatory damages (but not punitive damages) and attorney's fees for violations of fraud provisions. (Page 36)

Authorizes courts (but not Board) to award punitive damages.)

Sec. 54 Sec. 39 Confirm that Limited Liability Company members need not have workers' compensation coverage but allow Company to add them to its insurance policy if desired. (Page 33)

Sec. 33 Sec. 28 Speed processing of medical bills by requiring injury report to include release of medical records for treatment of the injury. (Page 24)

Sec. 34 Sec. 29 Maintain confidentiality of worker's medical and rehabilitation records held by Division or Board. (Pages 24-25)

Sec. 35 Sec. 30 Ban the Division from assembling or providing individual records for commercial purposes. (Page 25)

Sec. 34 **"Individually identifiable" information concerning employees and employers in Division files not public records. (Like Ad Hoc Committee Sec. 34)**

Summary Comparison of CSSB 130(FIN) am and Draft HCS 5/1/05

IMPROVING RETURN-TO-WORK BENEFITS WHILE REDUCING COSTS

Draft HCS CSSB 130(FIN) am

Sec. 13	Sec. 12	Require improved reporting of reemployment benefits, including plan status and tracking of injured workers' employment status at intervals following retraining plan completion, in order to provide more accurate and detailed information about the functioning and effectiveness of the reemployment benefits system. (Pages 11-12)
NO	Sec. 13	Reduce delays in determining reemployment benefits eligibility, and resulting costs, by allowing workers and employers to stipulate to eligibility. (Page 12)
NO	Sec. 13	Further reduce delays by simplifying standards for entitlement to evaluation. (Page 13)
NO	Sec. 15	Encourage utilization of reemployment benefits, and reduce costs, by requiring worker to either choose to begin the current retraining process within 30 days of eligibility determination or choose to accept new cash job dislocation benefits (\$5,000-13,500) based upon percentage of permanent partial impairment. (Pages 14-15)
Sec. 15	Sec. 17	Changes language to confirm Board practice of awarding benefits under AS 23.30.041(k) during "reemployment process" and to clarify equal treatment of (pre-1988 amendments) "permanent partial disability" and (post-1988 amendments) "permanent partial impairment" benefits. (Page 15-16)
NO	Sec. 13	Require Reemployment Benefits Administrator in Workers' Compensation Division to increase monitoring of potential conflicts of interest by assigned vocational rehabilitation specialists and reassign cases where conflicts are detected. (Pages 12-13)

Summary Comparison of CSSB 130(FIN) am and Draft HCS 5/1/05

INCREASED SPEED, EFFICIENCY, AND PREDICTABILITY IN WORKERS' COMPENSATION APPEALS

Draft HCS CSSB 130(FIN) am

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| NO | Sec. 32 | Replace appeals to the Superior Court, heard by numerous individual judges who are not necessarily experienced in workers' compensation matters and whose decisions do not establish binding legal precedent, with appeals to a single, experienced Workers' Compensation Appeals Commission whose decisions will be legal precedent. Legal precedent will be available years sooner than the current system, which establishes precedent only at the Supreme Court level, greatly increasing predictability of worker entitlements and employer obligations under the Act. (Pages 25-26) |
| NO | Sec. 33 | Permit the Workers' Compensation Division Director to file an appeal where an unsettled question of law is involved and a party is not represented by legal counsel. (Page 26) |
| NO | Sec. 33 | Speed the appeals process by requiring the Commission to issue its decision within 90 days after closing the record. (Page 28) |
| NO | Sec. 33 | Establish consistency in interpreting the provisions of the Workers' Compensation Act by having the Commission review legal conclusions using its independent judgment. (Page 29) |
| NO | Sec. 33 | Preclude Commission from reviewing Board's factual findings "de novo" based on the record. Provide instead that Commission is limited to only reviewing factual findings for "substantial evidence" support. (Limits Commission review to lesser standard currently used in superior court appeals.) (Page 27) |
| NO | Sec. 33 | Provide that Board-level determinations of the credibility of hearing witness testimony are binding on the Commission. (To allay concerns about addressing credibility without having seen the witness and possible constitutional issues.) (Page 27) |

Summary Comparison of CSSB 130(FIN) am and Draft HCS 5/1/05

Draft HCS CSSB 130(FIN) am

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| NO | Sec. 9 | Require chair to be licensed attorney in good standing with at least five years Alaska workers' compensation experience. Chair is full time state employee, Range 27. (Page 6) Chair appointed by Governor and confirmed by Legislature. (Page 5) |
| NO | Sec. 9 | Provide for two volunteer members on each Commission panel, one with an employee background and one with an employer background, appointed by the Governor and confirmed by the Legislature. (Pages 5-6) Volunteer members are paid \$200/day honorarium. (Page 7) (To allay concerns about cost and concerns that employee/employer background and understanding would be lost by having panels composed solely of attorneys.) |
| NO | Sec. 9 | Commission members appointed to five-year terms. (Page 6) |
| NO | Sec. 54 | Initial Commission members appointed to staggered terms in accordance with AS 39.05.055. (Pages 39-40) ((Sec. 33 maintains right of any party to appeal to Supreme Court.) (Page 29) |

Summary Comparison of CSSB 130(FIN) am and Draft HCS 5/1/05

MAINTAINING MEDICAL BENEFITS WHILE REDUCING COSTS

Draft HCS CSSB 130(FIN) am

NO Sec. 51 Repeals all provisions in Sec. 27 of the bill on June 30, 2007.

NO Sec. 27 Reduce health care costs incrementally by resetting the current maximum reimbursement rates for health care services at the maximum level applied to bills for services rendered in 2004. (By using the Alaska Workers' Compensation Board Medical Fee Schedule in effect on December 15, 2003.) (Pages 22-24)

Sec. 32 caps fees at current levels established in 12/1/2004 medical fee schedule.

Sec. 29 Sec. 25 Maintain those maximum reimbursement rates until completion of an appointed medical review committee's comprehensive examination of the workers' compensation health care delivery system. (Page 21)

AWCB may not contract with an organization, and must instead appoint a medical review committee comprised of seven outside members: one rehabilitation specialist, one chiropractic physician, four health care providers not chiropractors, and one public member.

Sec. 71 Sec. 58 The committee must report to the Commissioner of Labor & Workforce Development, and the Legislature, no later than the first week of the 25th legislative session. (Page 41)

Committee must report to the Commissioner by May 15, 2006. Committee must also assist the legislative task force and make recommendations to them by May 15, 2006.

Sec. 32 Sec. 27 Continue to protect workers by providing that they may not be required to pay any fee or charge for health care services provided under the Act. (Pages 22-24)

NO Sec. 24 Reduce health care costs incrementally by restricting compensable palliative care to that which an attending physician certifies is required to 1) enable the injured worker to continue time-of-injury employment or 2) participate in an agreed or approved reemployment plan. This limitation does not apply to treatments a

Summary Comparison of CSSB 130(FIN) am and Draft HCS 5/1/05

physician certifies are needed for chronic, debilitating pain. (Pages 20-21)

Draft HCS CSSB 130(FIN) am

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| NO | Sec. 26 | Seek to promote injured workers' safe and efficient return to health and function by presuming their injuries require the treatments described in the national, peer-reviewed <u>Occupational Medicine Practice Guidelines</u> of the American College of Occupational and Environmental Medicine. Presumption may be rebutted by injured worker's physician's written certification of the treatment at variance with the <u>Guidelines</u> and the basis of the physician's conclusion that varying treatment was reasonably required by the nature of the injury or process of recovery. A denial of treatment may not be based upon the <u>Guidelines</u> unless the treatment is specifically addressed in the <u>Guidelines</u> . (Pages 21-22) |
| NO | Sec. 26 | Require Board to adopt other guidelines for injuries not covered by the ACOEM <u>Guidelines</u> . Presumption application and means of rebuttal of those standards same as those for ACOEM <u>Guidelines</u> . (Pages 21-22) |
| Sec. 30 | Sec. 26 | Take advantage of generic drug cost savings by requiring their use unless a name brand is medically necessary. (Pages 21-22) |
| Sec. 30 | Sec. 26 | Take advantage of potential cost reductions by requiring the Department Of Labor & Workforce Development to adopt a preferred drug list like that developed by the Department of Health & Social Services. (The Department of Labor & Workforce Development must also set procedures for establishing need to depart from list.) (Pages 21-22) |
| Sec. 32 | Sec. 27 | Remove roadblocks to potential cost savings by allowing employers to develop preferred provider lists and negotiate fee rates. Workers are not required, and must be informed, that they can choose physicians not on the list. (Pages 22-24) |
| NO | Sec. 45 | Defines health care providers qualified to be "attending physicians." (Page 37-38) |

Summary Comparison of CSSB 130(FIN) am and Draft HCS 5/1/05

ADDITIONAL PROVISIONS IN DRAFT HCS

- Sec. 6** Board may authorize Commissioner's representatives to hear procedural, discovery, and stipulated matters without a Board hearing panel. (Pages 3-4)
- Sec. 24** Director may order suspected uninsured employer to stop work without investigation. (Page 12)
- Sec. 31** Establishes a "medical rehabilitation caseworker" to assist injured worker in securing medical treatment. Board may appoint one at party's request at any time and must appoint after 60 days treatment. Board must develop list, appoint by rotation, notify parties, develop and enforce quality, effectiveness, and impartiality standards, receive written reports every 30 days. Caseworker may not interfere with treatment. (Pages 15-17) Sec. 61 "Caseworker" must be a registered nurse, certified rehabilitation counselor, or "equivalent" in Board regulation. (Page 31)
- Sec. 41** Persons owed compensation without a Board order also will receive any penalties for late payment. (Page 23)
- Sec. 42** Persons owed compensation under a Board order also will receive any penalties for late payment. (Page 23)
- Sec. 49** Employer need not make retroactive compensation rate adjustments if annual recalculation of state average weekly wage (due 12/1) done between 1/1 and 4/1 of following year. (Page 25)
- Sec. 51** Second Injury Fund phased out. (Like SB 130/HB 180). (Page 26)
- Sec. 52** Compensation rate calculations changed for: all workers paid by hour/day/output; workers in exclusively seasonal or temporary employment paid weekly or monthly, and minors, apprentices, and trainees. Changes are departures from Model Act provisions adopted in 1995 (with Ad Hoc Committee agreement to address Supreme Court invalidation of prior provisions) that were recently affirmed by Supreme Court. (Pages 26-28)
- Sec. 60** Division must establish anti-fraud section with not less than two full-time investigators, sufficient staff support, and a publicized, toll-free report number. (Page 31)
- Sec. 64** Attorney General must designate not less than one half attorney position for fraud prosecutions. (Page 31)

Section by Section Analysis of CSSB 130 (FIN) am¹

This amended committee substitute, passed by the Alaska State Senate on April 14, 2005, (CSSB 130 (FIN) am), introduces new protections and a new benefit for injured employees, revises the timing for vocational reemployment (rehabilitation) eligibility, requires additional reporting in vocational reemployment, limits certain workers' compensation payments, and restricts medical cost liability. The amended committee substitute reinstates, with modification, the changes to the adjudication system in the original SB 130. It maintains additional oversight and reporting in vocational reemployment benefits, changes in the determination of reasonable and necessary medical treatment, and changes in the fraud provisions, made in other committees. It redefines "injury" in cases of aggravation of preexisting conditions. This amended committee substitute also completes the removal of the provisions in the original legislation that eliminated the Second Injury Fund. Finally, it creates a Legislative Task Force to address workers' compensation reform.

This amended committee substitute makes no sweeping changes to the Alaska Workers' Compensation Board and system of workers' compensation administration. The Alaska Workers' Compensation Board (board) retains responsibility for regulation and initial adjudication of claims and petitions arising under the act. There are some transfers of function included in the amended committee substitute, but, in place of many statutory changes transferring administrative functions, this amended committee substitute gives the board general power to delegate executive functions of administration and enforcement to the director of the Division of Workers' Compensation (division). The roles of the commissioner of the Department of Labor and Workforce Development and commissioner's designees are clarified: the commissioner's designee on a hearing panel is a hearing officer, but the commissioner, who serves as chair and voting member of the full board in its executive functions, is permitted to designate any representative to serve in the commissioner's place.

This amended committee substitute contains systemic improvements intended to promote settlement and speed the process of resolving cases. The amended committee substitute permits settlement of cases without a hearing and board approval if all parties are represented by counsel admitted to practice in Alaska, permits the Department of Labor and Workforce Development (department) to contract with a non-profit organization to represent employees otherwise unable to secure counsel, and provides for a consultation fee payable to attorneys without board approval.

¹ This is an analysis of the amended committee substitute passed by the State Senate and transmitted to the House of Representatives on April 14, 2005. This document was prepared using the text 24-GS1112\Y.A dated April 13, 2005, with text of amendments adopted before transmittal.

This amended committee substitute does not eliminate or reduce the reemployment benefit² but it does make changes intended to reduce costs associated with delays in the reemployment process. This amended committee substitute allows parties to agree that an employee is eligible for vocational rehabilitation, thus saving the cost of an eligibility evaluation and associated delay while an eligibility evaluation is done. This amended committee substitute eliminates the deadline for requests for eligibility evaluations from 90 days from the date of injury. Instead the right to request an eligibility evaluation is triggered by periods of consecutive days of absence from employment. In addition, an eligibility evaluation is mandated for employees who are absent due to injury for 90 consecutive days from their employment. These changes are intended to bring the process of vocational rehabilitation planning closer to the point that the employee has experienced significant absence from work and to ensure that all workers who may need reemployment benefits are notified of their rights and provided assistance as soon as possible. Finally, for those employees who have been found eligible for reemployment benefits, but who do not wish to undertake retraining as directed by the workers' compensation act, this amended committee substitute provides a job dislocation cash benefit if the employee elects not to undertake reemployment planning.

Another significant cost to the system is addressed by a series of changes designed to lower medical costs. Generic drugs are required unless medical necessity justification is provided in writing. The department is directed to create a "preferred drug" list or formulary, a common feature of group health insurance plans. Again, off-list drugs may be dispensed if medical necessity justification is provided. A change in this amended committee substitute replaces "prescribing physician" with "attending physician," requiring that the attending physician be the source of prescriptions and assuring the attending physician's full awareness of the employee's treatment. Employers are permitted to form groups to negotiate "preferred provider" lists – but use of the listed physicians by workers is voluntary. Fees for medical treatment and services, which are subject to regulation, are capped at the usual, customary, and reasonable rates in effect in December 2003.³ Palliative care involving continuing and multiple

² These benefits are often called vocational rehabilitation or retraining benefits. They are established in AS 23.30.041.

³ Rates are determined by the board by regulation, defining what is "usual, customary and reasonable". The board set the "usual, customary, and reasonable" rate at the "90th percentile of the range of charges" (8 AAC 45.082(i)).

The 90th percentile of range of charges means that in a community for which charges in a given period vary between \$50 and \$150 for a service, with two providers charging less than \$90, seven providers charging \$90 to \$120, and only one provider charging \$150, the "90th percentile" does not refer 90 percent of the difference between the highest and lowest, nor the number of providers charging any amount, nor 90

treatments of a similar nature after medical stability is restricted, except in cases where care is needed to relieve "chronic, debilitating pain." This amended committee substitute was amended to insert a "sunset" of this provision of June 30, 2007.

The original SB 130 provided presumptively correct guidance in determining what is "reasonable and necessary" medical care and treatment through adoption of one, and possibly more, national guidelines. The amended committee substitute changes the quantum and type of evidence required to rebut the presumption of what is "reasonable and necessary." Finally, in order to address the subject of medical costs in the future, the Commissioner is empowered to appoint a committee, which is directed to study the subject and to make a report to the commissioner and governor by March 1, 2007.

Other deficiencies in the current system are addressed. The director of the workers' compensation division is given stronger enforcement tools, including power to issue stop orders against uninsured employers without hearing, provided an investigation has revealed substantial evidence that the employer is uninsured. The stop order may be followed by a hearing before the board to assess substantial civil penalties against uninsured employers. The director may also petition the board for a stop order. The civil penalties will be paid to a fund used to pay claims of injured workers employed by uninsured employers.

The director is also given substantial powers to investigate fraud. Persons who report fraud are granted immunity, and other persons are required to report known fraud. This amended committee substitute preserves the deletion of changes to the current AS 23.30.250(a) proposed by SB 130, (adding definitions and rewording without change in meaning), relating to the criminal and civil fraud provisions.⁴ However, this substitute eliminates the redundancy created by CSSB 130(L&C), clarifies the provisions

percent of any charge. It is an artificial number to which 90 percent of all charges in the community will be equal or less. In this community example, the 90th percentile could be any number below \$150. The result of this method is that the 90th percentile rises as charges increase.

⁴ This change appears to have been prompted in part by a misunderstanding that SB 130 eliminated civil fraud actions. It did not do so; however, there were changes in the wording that were intended to strengthen criminal fraud proceedings and that was the focus of the changes proposed by SB 130 to the bill. The *administrative* fraud remedies were moved to a new subsection in the original SB 130, which remains in the amended committee substitute. The elimination of redundancy was accomplished by transferring the amendment to the text of AS 23.30.250(b) [administrative remedy for fraud] to new statute section AS 23.30.249(a) [administrative remedy for fraud].

relating to awards of damages to avoid unconstitutional impairment of right to a jury trial, and deletes the provision allowing awards of punitive damages.⁵

Two changes to compensation benefits are included in the bill, which will not apply to most employees. First, compensation paid to non-residents is capped at the rate that would be paid if the recipient resided in Alaska. Second, for workers whose employers belong to the Public Employees Retirement System (PERS) or Teachers Retirement System (TRS), an offset for PERS or TRS disability benefits is allowed against workers' compensation total disability payments, so that the combined benefits do not exceed 100 percent of the employee's spendable (after tax) wages. The cap on combined offset benefits is reduced to 80 percent of the employee's spendable wages when the employee is receiving reemployment benefits instead of compensation. Permanent partial impairment compensation is not reduced or offset, unless the employee is in a reemployment process receiving weekly payments of permanent partial impairment compensation at the temporary total disability rate under AS 23.30.041(k). In that case, the weekly permanent partial impairment compensation would be paid at the offset temporary total disability compensation rate. A similar off-set is permitted for workers who receive a disability benefit through an ERISA trust or employer contribution funded plan, if the trust or plan does not already take an offset for workers' compensation. This eliminates "double dipping" by employees whose combined benefits, tax free, exceed their wages. This provision applies only to permanent total disability compensation and temporary total disability compensation. It does not apply to death benefits.

This amended committee substitute contains a change in the definition of an "injury" covered by the workers' compensation act. In order to be an "injury" covered by the act, an aggravation, acceleration, or combination of a preexisting condition must be "the major contributing cause" of the need for medical treatment or disability. This is a change from the current law, which has been established by Supreme Court decisions. The current law is that an aggravation of a preexisting condition, including an increase in symptoms without permanent effect on the preexisting condition, is a covered injury if the employment is "a substantial factor contributing to" the disability or need for medical treatment. *DeYonge v. NANA/Marriott*, 1 P.3d 90, 96-97 (Alaska 2000); *Fairbanks No. Star Bor. v. Rogers & Babler*, 747 P.2d 528, 531 (Alaska 1987); *United Asphalt Paving v. Smith*, 660 P.2d 445, 447 (Alaska 1983); *Burgess Constr. Co. v. Smallwood*, 623 P.2d 312, 317 (Alaska 1981), *r'hrgranted*, 698 P.2d 1206 (Alaska 1985). This change would not eliminate coverage of claims for disability or medical treatment based on aggravation of preexisting conditions, but it would limit coverage to those where the employment was "the major contributing cause" of the disability or need for medical treatment.

⁵ The redundant text of AS 23.30.250(b) was eliminated and the text of the provision regarding damage awards was inserted.

This amended committee substitute removes a feature of the original SB 130: elimination of the second injury fund – a pre-statehood dedicated fund intended to encourage hiring workers with certain listed conditions.⁶

The amended committee substitute reinstates, with modification, the changes to the process of appellate review proposed by SB 130 to encourage consistency in legal interpretation and reduce delays on appeal. A commission acts as an appellate body with broad powers of review. The commission is balanced by appointment of two citizen representatives of employees and two citizen representatives of employers and a single chairman who acts as the executive of the commission. The chairman is an exempt employee. The commission's decisions are published and binding on the hearing panels. The commission's decisions may be appealed directly to the Supreme Court, without review by the Superior Court. Its jurisdiction is confined solely to appellate review of board decisions.

Finally, the amended committee substitute does not alter changes made in the insurance statutes to exempt joint insurance arrangements from participation in the assigned risk pool, require special deposits of insurers, and permit the director to seize and release the deposits to the Alaska Insurance Guaranty Association for claims payment in the event of insurer insolvency.

The workers' compensation act is lengthy and complex and this amended committee substitute addresses a number of subject areas. This sectional analysis provides cross-references other parts of the amended committee substitute as required, with additional references to unamended portions of the workers compensation act. This amended committee substitute also contains a number of what are essentially conforming amendments, delayed amendments, or transitional provisions.

Section 1 is a declaration of legislative intent to reform the workers' compensation insurance system to ensure payment of benefits when an insurer becomes insolvent and reduce the costs of workers' compensation premiums to

⁶ The fund was intended to encourage hiring employees with certain conditions by mitigating, to a limited extent, a potential employer's concern that hiring an employee with a listed condition would result in a greater liability if the employee were injured. The fund reimburses an employer for compensation payments made after two years of disability benefits have been paid, if the employee suffers a "second" injury that "aggravates, accelerates, or combines with" the listed condition to bring about a greater disability. The list, which includes conditions as varied as polio, diabetes, arthritis, varicose veins, and the bends, has not been altered since its inception. The fund does not reimburse medical or other benefits. The fund also requires the employer to have written knowledge of the condition before hiring or retaining the employee.

employers. This expression of intent applies only to secs. 2 through 4 of the bill.

- Section 2** creates new statutory provisions, AS 21.09.090(e) and (f), which provide additional financial protection for Alaskan workers in the event that a workers' compensation insurer becomes insolvent and unable to pay claims. Under these new provisions, insurers who are authorized to transact workers' compensation insurance in this state must maintain in the state a separate deposit for the protection of persons covered by workers' compensation insurance issued by the insurers that is in addition to the deposit required of insurers under AS 21.09.090(b). This new deposit will be based on collateralization of an insurer's loss reserves, but will not be less than \$100,000.
- Section 3** creates a new statutory provision, AS 21.24.130(f), which provides that if an insurer becomes insolvent in any state, the insurer's deposit in Alaska, provided in sec. 2 of the bill, will be immediately available to the director of the division of insurance for release to the Alaska Insurance Guaranty Association to pay workers' compensation claims of eligible employees covered under policies issued by the insolvent insurer. No part of the deposit may be paid to an insolvent insurer's receiver until all workers' compensation claims under the insolvent insurer's policies have been paid. This revision provides additional financial protection for Alaskan workers in the event that workers' compensation insurer becomes insolvent and unable to pay claims.
- Section 4** amends AS 21.39.155(a) to exempt all reciprocal insurers from the requirement of participating in the assigned risk pool, not just reciprocal insurers formed by a group of municipalities or non-profit public utilities. This change will mean that reciprocal insurers formed by certain industry groups will not be required, like other insurers, to insure employers in the assigned risk pool.
- Section 5** codifies a statement of legislative intent relating to the workers' compensation system. Subsections 1 through 3 replicate earlier statements of legislative intent that the workers' compensation laws ensure a quick, efficient, fair and predictable delivery of benefits to injured workers, at reasonable cost to employers, that cases be decided on their merits, and that the chapter not be construed to favor either party. Subsection 4 emphasizes the intent that proceedings be impartial and fair and that all parties be afforded due process.
- Section 6** amends AS 23.30.005(a) to require that a hearing officer [instead of any person] be designated by the commissioner to sit as the commissioner's representative on a hearing panel when the commissioner does not sit on the panel. The section is also amended to provide that the board shall by regulation provide procedures to avoid conflicts and the appearance of impropriety in hearings. This change directs the board to expand the scope of

its regulations beyond the provisions of the Executive Ethics Act, AS 39.52, applicable to members of boards and commissions, to address avoiding "the appearance of impropriety" as well as conflicts of interest.

Section 7 amends AS 23.30.005(b) to again clarify who may be appointed to represent the commissioner on a hearing panel (a hearing officer) while retaining the commissioner's broad discretion to designate a person to represent him as chairman and executive officer of the full board. The amendment also clarifies that hearing officers are not members of the full board.

Section 8 adds two new statutory provisions to AS 23.30.005. New subsection (m) authorizes the department to contract with a non-profit organization to provide employees information regarding workers' compensation proceedings and legal representation in proceedings before the board and commission. The intent is to provide some legal services to those persons unable to secure representation from attorneys practicing in the field.

Section 9 adds three new statutory provisions. The first, AS 23.30.007, establishes a new workers' compensation appeals commission within the Department of Labor and Workforce Development, with jurisdiction to hear appeals of board decisions arising under the workers' compensation act. The commission consists of five members, appointed for staggered terms of five years, appointed by the governor and confirmed by a majority of the legislature. The governor may make appointments to fill vacancies in the same manner for the completion of the vacant term. A majority of the members is a quorum. Four members are citizen members, compensated for their service at \$200/day. The citizen members are equally drawn from those who represent employees and those who represent employers. All members must be residents of Alaska for five years preceding appointment, not convicted of a felony, and not convicted of a misdemeanor related to workers' compensation. In addition to these qualifications, the chair must be licensed to practice law in Alaska and have five years experience of workers' compensation law. The chair is a full time exempt service employee paid at Range 27. All members shall take the oath of office. Reasons for removal by the Governor of a commission member are set out, as well as an opportunity to respond to the Governor's charges. Reasons for removal include: misconduct in office, ethical violations, conviction of a felony, conviction of a misdemeanor regarding workers' compensation, inability to serve or handle the caseload, incompetence, and failure to meet the requirements of office. A panel of two citizen members (one employee representative and one employer representative) and the chair will hear appeals. To conduct other business, the chair and equal numbers of employee and employer representatives must be present. Reasons for disqualification for conflicts are set out in detail, as well as a general disqualification if the member is unable to fair, impartial, and unbiased toward

an appeal participant. To prevent delay in the appeal process, if the chair is disqualified, or unavailable for more than ten days, the commissioner of labor may appoint a chair *pro tem*. The commission must be housed separately from the division to mark the separation of the appeal process in the workers' compensation system from the board and division's administrative and enforcement process.

Section 9 also, in the new statutory provision AS 23.30.008, sets out the powers and duties of the new workers' compensation appeals commission and, in AS 23.30.009, the powers and duties of the chair of the commission. The commission replaces the superior court as the body hearing administrative appeals in the workers' compensation system, and its decisions will be binding and have the force of legal precedence. The commission's decisions are final and conclusive, except that the Supreme Court may review the commission's decisions. The commission indexes and publicizes its formal decisions. The commission has the power to adopt regulations drafted and proposed by the chair, as well as rules of procedure for hearings and appeals, to adopt an official seal, and generally to carry out the powers and duties expressly granted or necessarily implied by the Act. The commission shall award attorney fees to successful appellants, but, as currently is the rule, attorney fees may not be awarded against an employee unless the appeal was frivolous, unreasonable or taken in bad faith.

The chair of the commission exercises general supervision of the office of the commission. The chair has the power to employ and supervise staff, assign work, and members to hearing panels, establish a time management system, manage the calendar of hearings and prepare the annual budget of the commission. The chair must prepare and make public an annual report of the commission's performance. The chair is barred from other employment and may not hold any other public or tribal office, nor hold office or position in a political party.

Section 10 amends AS 23.30.012 relating to settlement of claims. It divides the current statute into two subsections. It transfers from the board to the director the power to approve the form of settlements. New provisions require that settlements be filed in the division, and, upon filing with the division, makes the settlement effective and enforceable as an order of the board. This is a change from current law, which requires all workers, regardless of representation or circumstances, to obtain board permission to settle their claims and approval of the negotiated terms.

However, a new provision requires that in cases where workers are not represented by an attorney licensed to practice in this state, or where a beneficiary is a minor or incompetent, the settlement must be reviewed by a hearing panel and may be approved when it is in the best interests of the

worker or beneficiary. The hearing panel may hold a hearing and require an impartial medical examination before deciding whether to approve a settlement. This amendment parallels court practice in requiring review of minor or incompetent settlements.

Section 11 amends AS 23.30.041(a) to reassign from the board to the director power to employ the reemployment benefits administrator and to authorize the administrator to employ a staff. This transfers hiring and oversight of the administrator and staff to the director of the division of workers' compensation.

Section 12 amends AS 23.30.041(b) to add new, additional reporting requirements to those currently imposed upon the administrator. The intent is to provide greater accountability for reemployment benefits planning, costs, and results on an individualized basis. A specific focus is required on the employment status of the retrained employee at certain time intervals after plan completion.

Section 13 repeals and reenacts AS 23.30.041(c) to substantially change the timing of eligibility evaluations. As unamended, current law requires an injured employee to request an evaluation to determine eligibility for re-employment benefits within 90 days of injury. This deadline may be forgiven if the employee shows "unusual and extenuating circumstances". In practice, such circumstances are frequently found to exist, as where the employee's physician did not tell him or her that a return to work may not be possible or did not predict the employee will have a permanent impairment. As a result, there are lengthy delays in the return to work process. As changed, this section contains a new provision allowing employers and employees to agree that the employee is eligible for retraining, without incurring the cost of an evaluation or waiting for a permanent impairment prediction. Also a new provision, the administrator is required to notify injured employees of the right to an evaluation if the employee sustains 45 consecutive days of total disability. There is currently no requirement that employees be notified of their right to an evaluation before the deadline expires. Without regard to time after the date of injury, a right of the employer or employee to request an evaluation is triggered by 60 days of consecutive total disability and, if an employee is totally disabled by the injury for 90 consecutive days, an eligibility evaluation is required. The standards for eligibility are not changed. The intent of this section is to reduce costs by encouraging appropriate agreements; promoting early attention to the issue of potential need for retraining by employees, employers, and physicians; and assuring that employees with serious, disabling injuries are provided evaluations as soon as possible.

Section 14 amends AS 23.30.041(f) to add an additional disqualification for reemployment benefits. This section provides that if an employee is found eligible for reemployment benefits (which necessarily includes a physician's

prediction of inability to return to the employment at the time of injury), and the employee declines reemployment benefits in favor of a job dislocation benefit (see sec. 15), the employee will be ineligible for reemployment benefits in the future if the employee returns to work in the same or similarly demanding occupation as when previously injured and is injured again. This subsection parallels the current disqualification of an employee who receives reemployment benefits but who returns to work in the same or similarly demanding occupation as when previously injured and is injured again.

Section 15 amends AS 23.30.041(g) to provide that an employee who is eligible for reemployment benefits but elects not to use the benefits may take a job dislocation benefit instead of receiving nothing. This benefit does not affect the employee's rights to permanent partial impairment compensation. The intent of this section is to encourage employees who are eligible for retraining to seriously consider their options and encourage prompt entry into plan development, and, by making the alternative to retraining less attractive, to provide a disincentive to the practice of delaying plan development in hopes of increasing the settlement value of reemployment benefits, or of beginning plans the employee has no real interest or inclination to pursue in order to continue receiving payments. Finally, it provides a small benefit not previously available to those employees who genuinely desire to retire from the active labor market or to pursue plans of their own without direction from the workers' compensation system. A change in this amended committee substitute requires the conspicuous notation of future reemployment benefits being waived by acceptance of the job dislocation benefit on any form of waiver approved by the administrator.

Section 16 amends AS 23.30.041(j) to modernize the language.

Section 17 amends AS 23.30.041(k) to conform usage throughout the statute to reflect that reemployment compensation (a stipend) is paid during the reemployment process of evaluation and plan development and not only during the performance of a reemployment plan. It also makes it clear that the requirements regarding payment of permanent partial disability compensation (the term in use when this statute was adopted) applies to "permanent partial impairment" compensation, which replaced the term "permanent partial disability" in subsequent amendments.

Section 18 amends AS 23.30.041(n)(2) to extend the time to allow a person to elect vocational reemployment benefits or take a job dislocation benefit to 30 days.

Section 19 amends AS 23.30.041(p) to replace the board with the director as the holder of a public meeting to select a proposed date on which a new edition of the U.S. Department of Labor's Dictionary of Occupational Titles shall be implemented. The department replaces the board as the agency selecting the