

11907 SENATE LABOR & COMMERCE

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(n) The offices of the commission shall be physically separate from the offices of the division.

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

(b) The commission, in its administrative capacity, shall maintain, index, and make available for public inspection the final administrative decisions and orders of the commission and of the board. The chair of the commission may review and circulate among the other members of the relevant commission appeal panel the drafts of the panel's formal decisions and decisions upon reconsideration. The drafts are confidential documents and are not subject to disclosure.

(c) The chair of the commission shall draft and propose, and the commission in its administrative capacity may adopt, regulations implementing the commission's authority and duties under this chapter, including rules of procedure and evidence for proceedings before the commission under this chapter. The provisions of AS 44.62 (Administrative Procedure Act) apply to the adoption of regulations by the commission.

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

*Attorney fees paid
frivolous*

(e) The commission, in its administrative capacity, may adopt and alter an

1 official seal and do all things necessary, convenient, or desirable to carry out the
2 powers expressly granted or necessarily implied in this chapter.

3 **Sec. 23.30.009. Powers and duties of the chair of the commission.** (a) The
4 chair of the commission shall exercise general supervision over the office of the
5 commission and over appeals, and shall direct the administrative functions of the
6 commission. The chair of the commission shall serve as the executive officer of the
7 commission and shall have authority in all administrative matters relating to the
8 members. The chair may *Shaw*

9 (1) employ and supervise commission staff and appoint a commission
10 clerk;

11 (2) establish and implement a time management system for the
12 commission members and staff and manage the calendar of appeals;

13 (3) assign the work of the commission members and staff so that
14 appeals are resolved as expeditiously and competently as possible;

15 (4) advise and cooperate with the board to develop appropriate
16 procedures for maintenance and transfer of hearing files and the preservation and
17 transfer of records on appeal; and

18 (6) prepare an annual budget of the commission.

19 (b) The chair of the commission shall preside over hearings and arguments on
20 appeals. The chair of the commission shall ensure that all functions of the commission
21 are performed with due regard for the rights of all parties and consistent with the
22 orderly and prompt resolution of appeals. The chair of the commission shall rule on
23 questions of procedure and advise the representative members of the commission on
24 matters of law.

25 (c) The chair of the commission shall, not later than March 15 of each year,
26 make available to the public and file with the lieutenant governor, a report regarding
27 the commission, including data regarding time periods between initial receipt and final
28 decisions on appeals.

29 (d) The chair of the commission shall devote full time to the duties of the chair
30 of the commission and may not engage in any other employment or business. The
31 chair of the commission may not hold any other office or position under the United

1 States, this state, any municipality or political subdivision of this state, or any tribal
2 government or corporation. The chair of the commission may not hold office or
3 position in a partisan political organization or party.

4 * Sec. 11. AS 23 30.012 is amended to read:

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

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

28 * Sec. 12. AS 23.30.015(e) is amended to read:

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

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

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

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

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

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

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

*NEW SECTION - PAUL
11-15*

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

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

* Sec. 14. AS 23.30.041(c) is repealed and reenacted to read:

(c) An employee and an employer may stipulate to the employee's eligibility for reemployment benefits at any time. If an employee suffers a compensable injury and, as a result of the injury, the employee for 45 consecutive days is totally unable to return to his employment at the time of injury, the administrator shall notify the employee of the employee's rights under this section within 14 days of the forty-fifth day. If the employee is totally unable to return to the employee's employment for 60 consecutive days as a result of the injury, the employee or employer may request an eligibility evaluation. The administrator may approve the request if the employee's injury may permanently preclude the employee's return to the occupation at the time

1 of the injury If the employee is totally unable to return to the employment at the time
 2 of the injury for 90 consecutive days as a result of the injury, the administrator shall
 3 order an eligibility evaluation, without a request, unless a stipulation of eligibility was
 4 submitted. If the administrator receives a stipulation of eligibility, approves a request,
 5 or orders an evaluation, the administrator shall, on a rotating and geographic basis,
 6 select a rehabilitation specialist from the list maintained under (b)(6) of this section to
 7 perform the eligibility evaluation.

8 * Sec. 15 AS 23.30.041(f) is amended to read:

9 (f) An employee is not eligible for reemployment benefits if

10 (1) the employer offers employment within the employee's predicted
 11 post-injury physical capacities at a wage equivalent to at least the state minimum wage
 12 under AS 23.10.065 or 75 percent of the worker's gross hourly wages at the time of
 13 injury, whichever is greater, and the employer prepares the employee to be
 14 employable in other jobs that exist in the labor market;

15 (2) the employee previously declined the development of a
 16 reemployment benefits plan under (g) of this section, received a job dislocation
 17 benefit, and returned to work in the same or similar occupation in terms of
 18 physical demands required of the employee at the time of the previous injury;

19 ~~(3)~~(2) the employee has been previously rehabilitated in a former
 20 worker's compensation claim and returned to work in the same or similar occupation
 21 in terms of physical demands required of the employee at the time of the previous
 22 injury; or

23 ~~(4)~~(3) at the time of medical stability no permanent impairment is
 24 identified or expected.

25 * Sec. 16. AS 23.30.041(g) is amended to read:

26 (g) Within 15 days after the employee receives the administrator's
 27 notification of eligibility for benefits, an employee [WHO DESIRES TO USE THESE
 28 BENEFITS] shall give written notice under oath on a form provided by the
 29 division to the administrator and the employer of the employee's election to either
 30 use these benefits or to accept a job dislocation benefit. *layoff*

31 (1) The employee who elects to use these benefits also shall notify

1 employer of the employee's selection of a rehabilitation specialist who shall provide a
2 complete reemployment benefits plan. Failure to give notice of selection of a
3 rehabilitation specialist required by this subsection constitutes noncooperation under
4 (n) of this section. If the employer disagrees with the employee's choice of
5 rehabilitation specialist to develop the plan and the disagreement cannot be resolved,
6 then the administrator shall assign a rehabilitation specialist. The employer and
7 employee each have one right of refusal of a rehabilitation specialist.

8 (2) The employee who elects to accept a job dislocation benefit in lieu
9 of reemployment benefits and who has been given a permanent partial impairment
10 rating by a physician shall be paid

11 (i) \$5,000 if the employee's permanent partial impairment rating
12 is greater than 0 and less than 15 percent;

13 (ii) \$8,000 if the employee's permanent partial impairment
14 rating is 15 percent or greater but less than 30 percent; and

15 (iii) \$17,500 if the employee's permanent partial impairment is
16 greater than 30 percent.

17 (3) The form provided by the division for election shall specify that the
18 employee understands the scope of the benefits and rights he waives by his
19 election. The administrator shall serve a copy of the executed election form on
20 the parties within 10 days after filing. The election and waiver of unchosen
21 benefits is effective upon service to the parties. A waiver and election effective
22 under this subsection discharges the employer's liability for the benefits or
23 rights under this section that were not elected. A waiver may not be modified
24 under AS 23.30.130.

25 * Sec. 17. AS 23.30.041(j) is amended to read:

26 (j) The employee, rehabilitation specialist, and the employer shall sign the
27 reemployment benefits plan. If the employer and employee fail to agree on a
28 reemployment plan, either party may submit a reemployment plan for approval to the
29 administrator; the administrator shall approve or deny a plan within 14 days after the
30 plan is submitted; within 10 days after [OF] the decision, either party may seek
31 review of the decision by requesting a hearing under AS 23.30.110; the board shall

1 uphold the decision of the administrator unless evidence is submitted supporting an
2 allegation of abuse of discretion on the part of the administrator the board shall render
3 a decision within 30 days after completion of the hearing.

4 * Sec. 18. AS 23.30.041(p) is amended to read:

5 (p) When the United States Department of Labor publishes a new edition,
6 revision, or replacement for the "Selected Characteristics of Occupations Defined in
7 the Revised Dictionary of Occupational Titles" referred to in (c) of this section, the
8 director [BOARD] shall, not later than 90 days after the last day of the month in
9 which the new edition, revision, or replacement standard is published, hold an open
10 meeting under AS 44.62.310 to select the proposed date on which the new edition,
11 revision, or replacement standard will be implemented to make all eligibility
12 determinations required under (c) of this section. The date selected by the
13 department [BOARD] for implementing the new edition, revision, or replacement
14 standard may not be later than 90 days after the last day of the month in which the new
15 edition, revision, or replacement standard is published. After the meeting, the
16 director [BOARD] shall issue a public notice announcing the date selected by the
17 department. The requirements of AS 44.62.010 - 44.62.300 do not apply to the
18 selection or announcement of the date under this subsection.

19 * Sec. 19. AS 23.30.041(q) is amended to read:

20 (q) Notwithstanding AS 23.30.012, after medical stability has been determined
21 and a physician has predicted that the employee may have a permanent impairment
22 that may cause the employee to have permanent physical capacities that are less than
23 the physical demands of the employee's job at the time of injury, an employee may
24 waive any benefits or rights under this section, including an eligibility evaluation and
25 benefits related to a reemployment plan. To waive any benefits or rights under this
26 section, an employee must file a statement under oath with the division [BOARD] to
27 notify the parties of the waiver and to specify the scope of benefits or rights that the
28 employee seeks to waive. The statement must be on a form prescribed or approved by
29 the director [BOARD]. The division [BOARD] shall serve the notice of waiver on
30 all parties to the claim within 10 days after filing. The waiver is effective upon service
31 to the party. A waiver effective under this subsection discharges the liability of the

1 employer for the benefits or rights contained in this section. The waiver may not be
2 modified under AS 23.30.130.

3 * Sec. 20. AS 23.30.080(d) is amended to read:

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

14 * Sec. 21. AS 23.30.080 is amended by adding new subsections to read:

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

30 (f) If an employer fails to insure or provide security as required by
31 AS 23.30.075, the division may petition the board to assess a civil penalty of to \$1,000

1 for each employee for each day an employee is employed while the employer failed to
2 insure or provide the security required by AS 23.30.075. The failure of an employer
3 to file evidence of compliance as required by AS 23.30.085 creates a rebuttable
4 presumption that the employer failed to insure or provide security as required by
5 AS 23.30.075.

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

17 * Sec. 22. AS 23.30. is amended by adding a new section to read:

18 **Sec. 23.30.082. Workers' compensation benefits guaranty fund.** (a) The
19 workers' compensation benefit guaranty fund is established in the general fund to
20 carry out the purposes of this section. The fund is composed of civil penalty payments¹
21 made by employers under AS 23.30.080, income² earned on investment of the money
22 in the fund, money³ deposited in the fund by the department, and appropriations⁴ to the
23 fund. Money appropriated to the fund does not lapse. Amounts in the fund may be
24 appropriated for claims against the fund, for expenses directly related to fund
25 operations and claims, and for legal expenses.

26 (b) The Department of Revenue shall provide the division every three months
27 with a statement of the activities of, balances in, interest earned on, and interest
28 returned to the fund.

29 (c) Subject to the provisions of this section, an employee employed by an
30 employer who fails to meet the requirements of AS 23.30.075 and who fails to pay
31 compensation and benefits due to the employee under this chapter, may file a claim for

1 payment by the fund. In order to be eligible for payment, the claim form must be filed
2 within the same time, and in the same manner, as a workers' compensation claim. The
3 fund may assert the same defenses as an insured employer under this chapter.

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

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

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

16 * Sec. 23. AS 23.30.095(j) is amended to read:

17 (j) The commissioner shall [BOARD MAY] appoint a medical services
18 review committee, or contract with an existing organization in the state or another
19 state, to assist and advise the department and the board in matters involving the
20 appropriateness, necessity, and cost of medical and related services provided under
21 this chapter. The committee shall report to the commissioner before March
22 2007.

23 * Sec. 24. AS 23.30.095 is amended by adding new subsections to read:

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

31 (o) For purposes of this chapter, the medical treatment or services which the

1 nature of the injury or the process of recovery requires, required under
 2 AS 23.30.095(a), means treatment or services within the recommended guidelines set
 3 out in the American College of Occupational and Environmental Medicine's
 4 Occupational Medicine Practice Guidelines in effect at the time the treatment or
 5 service is provided. The American College of Occupational and Environmental
 6 Medicine's Occupational Medicine Practice Guidelines shall be presumed correct on
 7 the issue of the nature, extent, and scope of medical treatment or services. The
 8 presumption may be rebutted by a preponderance of scientific evidence establishing
 9 that a variance from the guidelines is reasonably required by the nature of the injury or
 10 the process of recovery. For an injury not covered by the American College of
 11 Occupational and Environmental Medicine's Occupational Medicine Practice
 12 Guidelines, the treatment or services shall be in accordance with standards based on
 13 other scientific, evidence-based medical treatment guidelines generally recognized by
 14 the national medical community and adopted by the board by regulation.

*treatment
guidelines*

15 * **Sec. 25.** AS 23.30. is amended by adding a new section to read:

16 **Sec. 23.30.097. Fees for medical treatment and services; payment of bills.**

17 (a) All fees and other charges for medical treatment or service are subject to regulation
 18 by the board. A fee or other charge for medical treatment or service may not exceed
 19 the lesser of

20 (1) the usual, customary, and reasonable fees for the treatment or
 21 service in the community in which it is rendered, not to exceed the fee schedule
 22 adopted by the board on December 15, 1999; or,

23 (2) the payment made by the employer as negotiated by the provider
 24 and the employer under (c) of this section.

25 (b) An employer, or group of employers, may establish a list of preferred
 26 physicians and treatment service providers to provide medical, surgical, and other
 27 attendance or treatment services to the employer's employees under this chapter;
 28 however

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

31 (2) when given to the employee, the employer's preferred physician list

1 shall clearly state that the list is voluntary, that the employee's choice is not restricted
2 to the list, that the employee's rights under this chapter are not impaired by choosing
3 an attending physician from the list, and that if the employee chooses an attending
4 physician from the list, the employee may, in the manner provided in AS 23.30.095,
5 make one change of attending physician, from the list or otherwise; and

6 (3) establishment of a list of preferred physicians does not affect the
7 employer's choice of physician for an employer medical examination under AS
8 23.30.095.

9 (c) An employer, or group of employers, may negotiate with physicians and
10 other treatment service providers under this chapter to obtain reduced fees and service
11 charges, and may take such fees and charges into account when forming a list of
12 preferred physicians and providers. In no event may an employer, or group of
13 employers, attempt to influence the treatment, medical decisions, or permanent
14 impairment ratings by physicians in the course of the negotiations regarding a
15 preferred physician and provider fee list.

16 (d) An employer shall pay an employee's bills for medical treatment under this
17 chapter, excluding prescription charges or transportation for medical treatment, within
18 30 days after the date that the employer receives the provider's bill or a completed
19 report as required by AS 23.30.095(c), whichever is later.

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

1 due under this subsection or (d) of this section.

2 (f) An employee may not be required to pay a fee or charge for medical
3 treatment or service provided under this chapter. AS 23.30. is amended by adding a
4 new section to read:

5 * Sec. 26. AS 23.30.100(b) is amended to read:

6 (b) The notice must be in writing and [,] contain the name and address of the
7 employee, [AND] a statement of the time, place, nature, and cause of the injury or
8 death. authority to release records of medical treatment for the injury or death,
9 and be signed by the employee or by a person on behalf of the employee, or in case of
10 death, by a person claiming to be entitled to compensation for the death or by a person
11 on behalf of that person.

12 * Sec. 27. AS 23.30.107(b) is amended to read:

13 (b) Medical or rehabilitation records in an employee's file maintained by the
14 division or held by the commission or the board are not public records subject to
15 public inspection and copying under AS 40.25. This subsection does not prohibit

16 (1) the reemployment benefits administrator, the division, the office of
17 the commission, the board, or the department from releasing medical or rehabilitation
18 records in an employee's file, without the employee's consent, to a physician providing
19 medical services under AS 23.30.095(k) or 23.30.110(g), a party to a claim filed by
20 the employee, or a governmental agency; or

21 (2) the quoting or discussing of medical or rehabilitation records
22 contained in an employee's file during a hearing on a claim for compensation [,] or in
23 a decision and order of the board or the commission.

24 * Sec. 28. AS 23.30.107 is amended by adding a new subsection to read:

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

27 * Sec. 29. AS 23.30.122 is repealed and reenacted to read:

28 **Sec. 23.30.122. Credibility of witnesses.** The board has the sole power to
29 determine the credibility of testimony presented by a witness. When credibility is
30 disputed in a proceeding before the board, the board's determination of credibility
31 must be supported by specific findings.

1 * **Sec. 30.** AS 23.30.125 is repealed and reenacted to read:

2 **Sec. 23.30.125. Administrative review of compensation order.** (a) A
3 compensation order becomes effective when filed with the office of the board as
4 provided in AS 23.30.110, and, unless proceedings to reconsider, suspend, or set aside
5 the order are instituted as provided in this chapter, the order becomes final on the 31st
6 day after it is filed.

7 (b) Notwithstanding other provisions of law, a decision or order of the board is
8 subject to review by the commission as provided in this chapter.

9 (c) If a compensation order is not in accordance with law or fact, the order
10 may be suspended or set aside, in whole or in part, through proceedings in the
11 commission brought by a party in interest against all other parties to the proceedings
12 before the board. The payment of the amounts required by an award may not be
13 stayed pending a final decision in the proceeding unless, upon application for a stay,
14 the commission, on hearing, after not less than three days' notice to the parties in
15 interest, allows the stay of payment, in whole or in part, where the party filing the
16 application would otherwise suffer irreparable damage. Continuing future periodic
17 compensation payments may not be stayed without a showing by the appellant of
18 irreparable damage and the existence of the probability of the merits of the appeal
19 being decided adversely to the recipient of compensation. The order of the
20 commission allowing a stay must contain a specific finding, based upon evidence
21 submitted to the commission and identified by reference to the evidence, that
22 irreparable damage would result to the party applying for a stay and specifying the
23 nature of the damage.

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

27 * **Sec. 31.** AS 23.30 is amended by adding new sections to read:

28 **Sec. 23.30.127. Appeals to commission.** (a) A party in interest may appeal a
29 compensation order issued by the board to the commission within 30 days after the
30 compensation order is filed with the office of the board under AS 23.30.110. The
31 director may intervene in an appeal. If a party in interest is not represented by counsel

1 and the compensation order concerns an unsettled question of law, the director may
2 file an appeal to obtain a ruling on the question by the commission.

3 (b) An appeal is initiated by filing with the office of the commission

4 (1) a signed notice of appeal specifying the compensation order
5 appealed from;

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

7 (3) other material the commission may by regulation require.

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

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

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

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

27 **Sec. 23.30.128. Commission proceedings.** (a) An appeal from a decision of
28 the board under this chapter, and other proceedings under this section, shall be heard
29 and decided by a three-member panel of the commission. An appeal panel of the
30 commission must include the chair of the commission. The chair of the commission
31 shall assign two members to each appeal, including one commission member

1 classified as representing employees and one commission member classified as
2 representing employers. Acts, decisions, and orders of the commission panel in the
3 appeal or related proceeding shall be considered the acts, decisions, and orders of the
4 full commission. The matter on appeal shall be decided on the record made before the
5 board, a transcript or recording of the proceedings before the board, and oral argument
6 and written briefs allowed by the commission. Except as provided in (c) of this
7 section, new or additional evidence may not be received with respect to the appeal.

8 (b) The commission may review de novo all discretionary actions, findings of
9 fact, and conclusions of law by board in hearing, determining, or otherwise acting on
10 any compensation claim or petition. The board's findings regarding the credibility of
11 testimony of a witness are binding on the commission. The findings of the board, if
12 not set aside by the commission, are conclusive.

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

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

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

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

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

22 (1) 31st day after the date of service of a decision if reconsideration is
23 not requested;

24 (2) 61st day after the date of service of a decision if reconsideration is
25 requested but an order for reconsideration is not issued; or

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

29 **Sec. 23.30.129. Judicial review of commission orders.** (a) Notwithstanding
30 the provisions of AS 44.62.560, orders of the commission may not be appealed to the
31 superior court. Consistent with AS 22.05.010(b), final decisions of the commission

1 may be appealed to the supreme court, and other orders may be reviewed by the
2 supreme court as provided by the Alaska Rules of Appellate Procedure.

3 (b) A finding by the commission concerning the weight to be accorded a
4 witness's testimony, including medical testimony and reports, is conclusive even if the
5 evidence is conflicting or susceptible to contrary conclusions. The commission's
6 findings of fact may be reversed on appeal if not supported by substantial evidence in
7 light of the whole record.

8 * Sec. 32. AS 23.30.175(b) is amended to read:

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

11 (1) the weekly rate of compensation shall be calculated by multiplying
12 the recipient's weekly compensation rate calculated under AS 23.30.180, 23.30.185,
13 23.30.190, 23.30.200, or 23.30.215 [,] by the ratio of the cost of living of the area in
14 which the recipient resides to the cost of living in this state;

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

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

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

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

28 * Sec. 33. AS 23.30.175(c) is amended to read:

29 (c) The department [BOARD] shall provide by regulation for the
30 determination and comparison of living costs for this state and the other areas in which
31 recipients reside and for the [ANNUAL] redetermination and comparison of these

1 costs every three years.

2 * Sec. 34. AS 23.30.205(c) is amended to read:

3 (c) 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. 35. AS 23.30.205 is amended by adding a new subsection to read:

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

13 * Sec. 36. AS 23.30 is amended by adding a new section to read:

14 **Sec. 23.30.224. Coordination of benefits.** (a) Notwithstanding other
15 provisions of this chapter, an employer's liability for payment of weekly
16 compensation under AS 23.30.180 or AS 23.30.185 to a employee eligible for a
17 disability benefit under AS 14.25.130, or AS 39.35.400 or AS 39.35.410 may not
18 exceed the lesser of

19 (1) the difference between the disability benefit payable to the
20 employee under AS 14.25.130, or AS 39.35.400 or AS 39.35.410, converted to a
21 weekly basis, and 100 percent of the employee's spendable weekly wage, as
22 calculated under AS 23.30.220; or

23 (2) the maximum compensation rate calculated under AS 23.30.175.

24 (b) An employer's liability for payment of compensation under
25 AS 23.30.041(k) to an employee eligible for a disability benefit payable under
26 AS 14.25.130, AS 39.35.400 or AS 39.35.410 may not exceed the lesser of

27 (1) the difference between the disability benefit payable to the
28 employee under AS 14.25.130, or AS 39.35.400 or AS 39.25.410, converted to a
29 weekly basis, and 80 percent of the employee's spendable weekly wage, as calculated
30 under AS 23.30.220; or

31 (2) 105 percent of the average weekly wage calculated under

1 AS 23.30.175(d).

2 (b) Notwithstanding other provisions of this chapter, the liability of an
3 employer for payment of compensation for an injury or illness under AS 23.30.180 or
4 AS 23.30.185 to an employee who is covered by a union or group retirement system to
5 which the employer makes contributions under a collective bargaining agreement, or
6 by membership in a welfare or pension plan or trust, may not not exceed the lesser of

7 (1) the difference between 100 percent of the employee's spendable
8 weekly wage and an amount equal to the disability benefit, disability pension, or
9 medical retirement benefit that the employee is eligible to receive as a result of the
10 injury or illness, calculated on a weekly basis, under the retirement system or welfare
11 or pension plan or trust; or

12 (2) the maximum compensation rate calculated under AS 23.30.175.

13 (c) If the union or group retirement system, pension plan, or trust referred to in
14 (b) of this section provides by its terms that its benefits are precluded or reduced if
15 benefits are awarded under this chapter, the limitation provided in (b)(1) of this
16 section shall not be applicable to the extent of the amount so precluded or reduced.

17 (d) Notwithstanding other provisions of this chapter, the liability of an
18 employer for payment of compensation for an injury or illness under AS 23.30.041(k)
19 to an employee who is covered by a union or group retirement system to which the
20 employer makes contributions under a collective bargaining agreement, or by
21 membership in a welfare or pension plan or trust, may not not exceed the lesser of

22 (1) the difference between 80 percent of the employee's spendable
23 weekly wage and an amount equal to the disability benefit, disability pension, or
24 medical retirement benefit that the employee is eligible to receive as a result of the
25 injury or illness, calculated on a weekly basis, under the retirement system, welfare or
26 pension plan or trust; or

27 (2) 105 percent of the average weekly wage calculated under
28 AS 23.30.175(d).

29 (e) If the union or group retirement system, pension plan, or trust referred to in
30 (d) of this section provides by its terms that benefits are precluded or reduced
31 thereunder if benefits are awarded under this chapter, the limitation provided in (d)(1)

1 of this section shall not be applicable to the extent of the amount so precluded or
2 reduced.

3 (f) If the employee receives a lump sum distribution of disability benefits,
4 disability pension, or medical retirement benefits, the combined workers'
5 compensation and weekly disability or medical retirement benefit specified in this
6 section shall be calculated by assuming that the employee received weekly disability
7 or medical retirement payments under the applicable plan from the date of eligibility
8 for the disability or medical retirement benefit, until the total of such weekly payments
9 equals the amount of the lump sum, exclusive of that portion of the lump sum
10 specifically set aside under the applicable plan for retraining expenses, medical and
11 transportation expenses, and attorney fees or other legal costs.

12 * Sec. 37. AS 23.30.240 is amended to read:

13 **Sec. 23.30.240. Officers of corporations, municipal corporations, and**
14 **nonprofit corporations, and members of limited liability companies, as**
15 **employees.** An executive officer elected or appointed and empowered in accordance
16 with the charter and bylaws of a corporation, other than an official of a municipal
17 corporation or a charitable, religious, educational, or other nonprofit corporation, is an
18 employee of the corporation under this chapter. However, an executive officer of a
19 corporation may waive coverage under this chapter, subject to the approval of the
20 **director** [COMMISSIONER OF LABOR AND WORKFORCE DEVELOPMENT],
21 notwithstanding AS 23.30.245(b). Notwithstanding any other provision of this
22 chapter, an executive officer of a municipal corporation or of a charitable, religious,
23 educational, or other nonprofit corporation may be brought within the coverage of its
24 insurance contract by the corporation by specifically including the officer in the
25 contract of insurance. The election to bring an executive officer within the coverage
26 continues in force for the period the contract of insurance is in effect. During that
27 period, an executive officer brought within the coverage of the insurance contract is an
28 employee of the corporation under this chapter.

29 * Sec. 38. AS 23.30.240 is amended by adding a new subsection to read:

30 (b) Except as provided in this subsection, a member of a limited liability
31 company organized under AS 10.50 is not an employee of the company under this

1 chapter. Notwithstanding any other provision of this chapter, a member of a limited
2 liability company may be brought within the coverage of the company's insurance
3 contract by the company specifically including the member in the contract of
4 insurance. The election to bring the member within the company's coverage continues
5 in force for the period the contract of insurance is in effect. During that period a
6 member brought within the coverage of the insurance contract is an employee of the
7 company under this chapter.

8 * **Sec. 39.** AS 23.30.247(c) is amended to read:

9 (c) This paragraph may not be construed to prohibit an employer from
10 requiring a prospective employee to fill out a preemployment questionnaire or
11 application regarding the person's prior health as long as it is meant to [EITHER
12 DOCUMENT WRITTEN NOTICE FOR SECOND INJURY FUND
13 REIMBURSEMENT UNDER AS 23.30.205(c)] or determine whether the employee
14 has the physical or mental capacity to meet the documented physical or mental
15 demands of the work.

16 * **Sec. 40.** AS 23.30 is amended by adding a new section to read:

17 **Sec. 23.30.249. Fraudulent acts and false or misleading statements.** (a) An
18 employer, insurer, or other person may petition for an order to reimburse a payment
19 and the cost of compensation, medical treatment, or other benefit provided under this
20 chapter obtained by a fraudulent act or false or misleading statement or representation.
21 If the board, after a hearing as provided by AS 23.30.110, finds by a preponderance of
22 the evidence that a person has obtained a payment, compensation, medical treatment,
23 or another benefit provided under this chapter by a fraudulent act or by knowingly
24 making a false or misleading statement or representation for the purpose of obtaining
25 that benefit or payment, the board shall order that person to make full reimbursement
26 of the payment or cost of all benefits obtained. Upon entry of an order authorized
27 under this subsection, the board shall also order that person to pay all reasonable costs
28 and attorney fees incurred in obtaining an order under this section and in defending
29 any fraudulent claim made for benefits under this chapter. If a person fails to comply
30 with an order requiring reimbursement of payment or cost of benefits, and payment of
31 costs and attorney fees, the employer, insurer, or other party may declare the person in

1 default and proceed to collect any sum due in the same manner as provided under
2 AS 23.30.170(b) and (c).

3 (b) Except as provided in (c) of this section, a person is not liable for civil
4 damages for filing a report with or furnishing other information, whether written or
5 oral, concerning a suspected, anticipated, or completed fraudulent act or false or
6 misleading statements or representation to

7 (1) law enforcement officials or their agents and employees;

8 (2) the division of workers' compensation, the division of insurance in
9 the Department of Commerce, Community, and Economic Development or an agency
10 in another state that regulates insurance or workers' compensation;

11 (3) an insurer or adjuster or its agents, employees, or designees, or the
12 risk manager of a self-insured employer under this chapter.

13 (c) The provisions of (b) of this section do not preclude liability for civil
14 damages as described in (b) of this section if the liability arose as a result of reckless,
15 willful, or intentional misconduct.

16 (d) An insurer, an adjuster, or a risk manager of a self-insured employer that
17 has reason to believe that a fraudulent workers' compensation demand or claim has
18 been made against it shall send the director a report disclosing information that the
19 director may require. An insurer or an adjuster or its employee or agent, or a risk
20 manager of a self-employed employer, or another person acting in good faith is not
21 civilly liable for damages resulting from the filing of the report or the furnishing of
22 information required by this section or by the director.

23 (e) The director may investigate facts reported under this section and may
24 refer facts indicating a possible violation of law to the appropriate prosecutor or
25 agency. If the director determines that there is credible evidence that a person
26 obtained a payment, compensation, medical treatment, or other benefit provided under
27 this chapter by a fraudulent act or false or misleading statement or representation as
28 provided in (a) of this section, the director shall notify the affected employer, insurer,
29 and adjuster upon conclusion of the investigation. If the fraudulent act or false or
30 misleading statement or representation was perpetrated against the division, the
31 director may file a petition as provided in AS 23.30.110 for an order of forfeiture

1 against the person, precluding, in whole or in part, the person from future payment,
2 compensation, medical treatment, or other benefit provided under this chapter.

3 (f) The papers, reports, documents, and evidence received under this section or
4 in an investigation arising from information received under this section are not subject
5 to public inspection for so long as the director considers confidentiality to be in the
6 public interest or reasonably necessary to complete an investigation or protect the
7 person investigated from unwarranted injury. Papers, reports, documents, and
8 evidence relative to an investigation under this section are confidential and not subject
9 to subpoena unless, after notice to the director and a hearing, a court determines that
10 the director would not be unduly hindered by public inspection.

11 (g) If the material that the director seeks to obtain is located outside the state,
12 the material may be made available to the director to examine at the place where the
13 material is located. The director may designate representatives, including officials of
14 the state in which the material is located, to inspect the material on behalf of the
15 director. The director may respond to a request from an official of another state for
16 similar material.

17 (h) In this section, "fraudulent act" includes

18 (1) to knowingly pretend injury or disability, with intent to defraud or
19 obtain a benefit under this chapter;

20 (2) to knowingly conceal, suppress, destroy, remove, or alter records,
21 with intent to defraud or obtain a benefit under this chapter;

22 (3) to knowingly assist or prepare another person to submit a false or
23 misleading statement in support of a claim for benefits under this chapter with reckless
24 disregard that the person is not entitled to benefits under this chapter;

25 (4) to use force against a person; damage the property of a person, or
26 threaten a person with intent to improperly influence the opinion of a witness, a
27 physician, or other health care provider;

28 (5) except as otherwise authorized under this chapter, to knowingly
29 confer, offer to confer, solicit, agree to accept, or accept property, services, or a
30 benefit

31 (A) to refer an employee to a physician or other health care

1 provider; or

2 (B) for providing medical treatment, services, medicines, or
3 supplies to an employee if the property, services, or benefit is in addition to
4 payment by the employer, insurer, or adjuster allowed under this chapter.

5 * Sec. 41. AS 23.30.250 is repealed and reenacted to read:

6 **Sec. 23.30.250. Penalty for fraudulent acts or false or misleading**
7 **statements or representations.** (a) A person is guilty of theft by deception as defined
8 in AS 11.46.180, and may be punished as provided by AS 11.46.120 - 11.46.150, and
9 is civilly liable to a person adversely affected by the conduct, if the person

10 (1) knowingly makes a false or misleading statement, representation,
11 or submission related to an injury, compensation, or benefit under this chapter;

12 (2) knowingly assists, abets, solicits, or conspires in making a false or
13 misleading submission affecting the payment, coverage, or other benefit under this
14 chapter;

15 (3) knowingly misclassifies employees or engages in deceptive leasing
16 practices for the purpose of evading full payment of workers' compensation insurance
17 premiums; or

18 (4) employs or contracts with a natural person or business organization
19 to coerce or encourage an individual to file a fraudulent compensation claim.

20 (b) In this section,

21 (1) "benefit" means a payment, compensation, medical treatment,
22 service, product, entitlement, or right available under this chapter;

23 (2) "knowingly" has the meaning given in AS 11.81.900.

24 * Sec. 42. AS 23.30.260 is amended by adding a new subsection to read:

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

29 * Sec. 43. AS 23.30.395 is amended by adding new paragraphs to read:

30 (35) "commission" means the Workers' Compensation Appeals
31 Commission;

1 (36) "commissioner" means the commissioner of labor and workforce
2 development;

3 (37) "department" means the Department of Labor and Workforce
4 Development;

5 (38) "director" means the director of the division of workers'
6 compensation in the department;

7 (39) "division" means the division of workers' compensation in the
8 department.

9 * Sec. 44. AS 37.05.146(b) is amended by adding a new paragraph to read:

10 (78) Workers' Compensation Benefit Guaranty Fund.

11 * Sec. 45. AS 39.25.110 is amended by adding a new paragraph to read:

12 (40) the chair of the Workers' Compensation Appeals Commission
13 (AS 23.30.007).

14 * Sec. 46. AS 39.25.120(c)(14) is amended to read.

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

17 * Sec. 47. AS 39.50.200(b)(31) is amended to read:

18 (31) Workers' Compensation Appeals Commission (AS 23.30.007)
19 and Workers' Compensation Board (AS 23.30.005);

20 * Sec. 48. AS 44.64.030(a) is amended by adding a new paragraph to read:

21 (36) AS 23.30 (workers' compensation).

22 * Sec. 49. AS 23.30.095(f), 23.30.095(l), and 23.30.095(m) are repealed.

23 * Sec. 50. AS 23.30.015(c), 23.30.040, 23.30.205, 23.30.395(27); and AS 37.05.146(c)(12)
24 are repealed.

25 * Sec. 51. The uncodified law of the State of Alaska is amended by adding a new section to
26 read:

27 APPLICABILITY. The amendment to AS 23.30.175(b) made by sec. 32 of this Act
28 applies to an injury occurring on or after the effective date of sec. 60 of this Act.

29 * Sec. 52. The uncodified law of the State of Alaska is amended by adding a new section to
30 read:

31 IMPLEMENTATION OF REPEAL OF SECOND INJURY FUND. On the date after

1 the date that the commissioner of labor and workforce development makes the certification
2 required by sec. 61 of this Act, the balance of the second injury fund created by former
3 AS 23.30.040 is transferred to the general fund.

4 * Sec. 53. The uncodified law of the State of Alaska is amended by adding a new section to
5 read:

6 TRANSITION: INITIAL TERMS OF MEMBERS OF WORKERS'
7 COMPENSATION APPEALS COMMISSION. Notwithstanding AS 23.30.007(e), enacted
8 by sec. 10 of this Act, the terms of the initially appointed representative members of the
9 Workers' Compensation Appeals Commission, established by AS 23.30.007 enacted by sec.
10 10 of this Act, shall be set by the governor to achieve staggered terms in the manner provided
11 in AS 39.05.055.

12 * Sec. 54. The uncodified law of the State of Alaska is amended by adding a new section to
13 read:

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

21 (b) In this section,

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

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

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

28 * Sec. 55. The uncodified law of the State of Alaska is amended by adding a new section to
29 read:

30 TRANSITIONAL PROVISIONS. (a) Litigation, investigations, and other
31 proceedings pending under a law amended or repealed by this Act, or in connection with

1 functions transferred by this Act, continue in effect and may be continued and completed,
2 notwithstanding a transfer or amendment or repeal provided for in this Act.

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

9 * Sec. 56. The uncodified law of the State of Alaska is amended by adding a new section to
10 read:

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

16 (b) In order to provide for the procedures and other administrative matters necessary
17 to ensure the on-going implementation of the state's workers' compensation laws to meet the
18 urgent needs of injured workers, and thus ensure the preservation of the public peace, health,
19 safety, or general welfare, the Workers' Compensation Appeals Commission established by
20 AS 23.30.007, enacted by sec. 10 of this Act, may adopt under AS 23.30.008, enacted by
21 sec. 10 of this Act, as emergency regulations, the regulations necessary to implement the
22 changes made by this Act.

23 * Sec. 58. Section 56(a) of this Act takes effect immediately under AS 01.10.070(c).

24 * Sec. 59. Sections 55, 56(b), and 58 of this Act take effect August 1, 2005.

25 * Sec. 60. Sections 1 - 4, 6-11, 13 -39, 40 - 49, 51 - 54, 57, and 59 - 61 of this Act take
26 effect September 1, 2005.

27 * Sec. 61. Sections 5, 12, 39, and 50 of this Act take effect on the date that the
28 commissioner of labor and workforce development certifies to the lieutenant governor that all
29 liability for previously accepted claims to the second injury fund created by AS 23.30.040,
30 and claims ordered to be paid from the fund, have been satisfied.

Fairbanks Daily News-Miner

Workers' comp overhaul proposed

By TIMOTHY INKLEBARGER

Thursday, February 24, 2005 - Associated Press Writer

JUNEAU--Gov. Frank Murkowski is taking another shot at workers' compensation revision this year with a proposal he says will make the system less expensive for employers and more efficient for workers.

But his plan could have trouble making it through the Legislature over objections from interest groups and lawmakers. A similar proposal died during the regular session last year and another was rejected during the special session last summer.

Labor Commissioner Greg O'Claray said Alaska has the second-highest workers' compensation premiums in the country, next to California. Rates have increased 36 percent on average over the last two years, he said.

Some small businesses have seen their premiums more than double over the last five years, he said. The costs for the Kodiak island Borough, for example, went from \$43,275 in 2001 to \$88,573 in 2004, according to the labor department.

O'Claray said Murkowski's bill aims to lower the litigation costs and medical costs associated with the workers' comp system. The proposal caps medical fees paid for injured workers at levels set in 1999 and establishes a review committee to study the system and report to the labor commissioner in March 2007.

The proposal also would bypass the Superior Court and send appeals of claims to a five-member commission appointed by the governor. The commission would include two members representing management, two members representing labor and a professional hearing officer. The commission would have the authority to establish legal precedent in cases, a power not held by the Superior Court.

O'Claray said it would speed up the appeals process.

"Unfortunately, with the jammed-up calendar of our court system and the fact that they may be filed in various jurisdictions throughout our state render two things: one, extreme delay in resolution and two, inconsistent rulings of the law," he said.

Most lawmakers were not familiar with the specifics of the 35-page proposal, which O'Claray said is expected to be submitted to the Legislature within the next few days.

Jim Jordan, executive director of the Alaska State Medical Association, said he's concerned about a provision in the bill that would require workers' compensation health care providers to use a preferred drug list from the Medicaid system.

does that mean generic

He said the list may not be appropriate for patients injured in the workplace. "We hope no list takes the place of a physician's judgment," he said.

Alaska Injured Workers' Alliance Executive Director Barbara Williams said the provision could leave injured workers stuck paying the bill.

Jordan said rolling back the rates of payment to 1999 levels would essentially be a tax on physicians.

What is the difference between those rates and current rates?

“The cost of workers’ compensation insurance is tied to a company’s payroll, she said, and that went from \$22,000 to \$80,000 per year over the past two years.”

Anchorage Daily News, February 9, 2005
Trina Johnson, Owner, La Mex Restaurant

MONEY Classified

Permanent Fund Dividends



Average total annual payout,
1982-2004: \$584 million
Total received per Alaskan,
1982-2004: \$23,929.69
Average payment size
since 1982: \$1,040

ANCHORAGE DAILY NEWS • www.adn.com

WEDNESDAY, FEBRUARY 9, 2005

Labor costs kill downtown La Mex

■ **RESTAURANT:** Owner took over chain from parent in 1990; other two stay open.

By SARANA SCHELL
Anchorage Daily News

Anchorage's downtown La Mex restaurant, home of Grande Ronde and the Jalapeno Eating Contest during Fur Rendezvous, not to mention a major annual Cinco de Mayo party, is closed.

Owner Trina Johnson said she closed the location last week, after 30 years in business, because of rising labor costs.

La Mex's two other locations in Anchorage, in Spenard and on King Street in South Anchorage, remain open. They absorbed some of the downtown restaurant's 35 to 40 employees. Johnson laid off 26. She already had cut 12 positions after Christmas, she said.

"I feel bad," Johnson said, "but you have to start cutting your highest cost items."

Labor costs at La Mex went up \$200,000 in 2003, the year the state increased its minimum wage from \$5.65 to \$7.15 an hour, Johnson said.

The cost of workers' compensation insurance is tied to a company's

payroll, she said, and that went from \$22,000 to \$80,000 per year over the past two years.

A higher alcohol tax, a lowered legal breath-alcohol content limit and a smoking ban didn't help, Johnson said.

"People are drinking less," she said, and "your profit's in your alcohol."

La Mex raised prices by 5 percent two weeks ago, Johnson said, to offset rising food costs. She said she was reluctant to change menu prices.

"People are only going to pay so much for a taco," Johnson said.

To cut costs, the restaurants quit serving sizzle-making lemons with their fajitas, saving \$500 a month, Johnson

said, and started outsourcing kitchen prep work.

Tourist seasons were busy, Johnson said, but not enough to keep the largest of the three locations open.

"That's bad," said Jeramie Ford when he heard the restaurant on Sixth Avenue and I Street was closed. Ford, 28, said he started eating there as a 5-year-old, when he used to have to wait for a table. That hasn't been the case for years, he said, but Ford kept coming for the chicken fajitas.

"It's kind of sad to see it go," he said.

Johnson said her parents started La Mex in 1969 in a Mountain View log cab-

in that seated 12. There, she said, her mother made guacamole from scratch at customers' tables.

Johnson took over the business in 1990 and opened the South Anchorage location in 1999.

That location will take on the American fare that only the downtown restaurant carried, such as prime rib.

The Grande Ronde will be held at La Mex in Spenard this year, Johnson said, while the King Street restaurant will host Fur Rondy events and the Cinco de Mayo party.

■ Daily News reporter Sarana Schell can be reached at sschell@adn.com.

SB

131

SENATE COMMITTEE REPORT
First Committee of Referral

DATE: 3/4/05

FURTHER: Finance

Date of 5-Day Notice: _____
 (in accordance with Uniform Rule 23)

DATE TURNED
 INTO OFFICE: _____

Labor and Commerce Committee considered SENATE BILL NO. 131

SB 131 WAGE & HOUR ACT: EXEC/PROF/ADMIN/SALES

"An Act amending the Alaska Wage and Hour Act as it relates to the employment of a person acting in a supervisory capacity; providing definitions for persons employed in administrative, executive, and professional capacities, for persons working in the capacity of an outside salesman, and for persons working in the capacity of a salesman employed on a straight commission basis."

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

Senate Bill:	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	New Title
House Bill:	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	Technical Title Change
<input type="checkbox"/>	New Title w/ SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	Do PASS	Do NOT PASS	No REC	AMEND
<i>Benny Davis</i>			X	
<i>John Glenn</i>	X			
<i>Keith Nelson</i>	✓			
<i>Ben Stevens</i>	✓			
CHAIR: <i>A. Brundage</i>	✓			

JOHN SEDOR (ON-LINE) WILL WALK US THRU
THE CS

SECTIONAL ANALYSIS FOR CS SB 131(L&C)

Title: An act amending the Alaska Wage and Hour Act as it relates to the employment of a person acting in a supervisory capacity or in an administrative, executive or professional capacity; relating to definitions under the Alaska Wage and Hour act and providing definitions for persons employed in administrative, executive and professional capacities, for persons working in the capacity of an outside salesman, for persons working in the capacity of a salesman employed on a straight commission basis, and for persons that perform computer-related occupations; and providing for an effective date.

CHANGES FROM THE "G" VERSION ARE NOTED IN BOLD

Section 1: Adds "computer systems analyst, computer programmer, software engineer or other similarly skilled workers" to the list of exemptions from the Wage & Hour Act.

The previous CS had "computer related occupations" within the definition of "professional capacity". We have now broken them out as a separate exemption.

Section 2: AS 23.10.055(b)
Requires individuals employed as executive, administrative and professionals be compensated on a salary of not less than two times the minimum wage for the first 40 hours of employment.

The CS has not changed this provision, but it has been moved within the statutes.

AS 23.10.055(c)(1)
Provides that "bona fide executive, administrative or professional capacity" be defined in accordance with the Fair Labor Standards Act.

The definitions for these terms in the previous CS mirrored the federal definitions, but were spelled out within the statute. Because there were questions as to the terms used within the definitions, we have reverted to the federal definitions for the above terms, as provisions have been made for each word used within the federal definitions.

AS 23.10.055(c)(2)
Provides that "computer systems analyst, computer programmer, software engineer or other similarly skilled worker" be defined in accordance with the Fair Labor Standards Act.

This section provides the definition for this exemption found in Section 1 of the bill. Currently, Alaska's regulations defer to the Fair Labor Standards Act when defining computer related occupations. 8 AAC 15.910(a)(11)(iv).

AS 23.10.055(c)(3)

Provides a definition for "outside salesman."

This definition has not changed from the previous CS, but it has been moved within the statutes.

AS 23.10.055(c)(4)

Provides a definition for "salesman who is employed on a straight commission basis."

This definition has not changed from the previous CS, but it has been moved within the statutes.

Section 3: Removes the provision that a person acting in a "supervisory capacity" is exempt from overtime.

This provision has not changed from the previous CS, but it has moved to a different section within the bill.

Section 4: Deletes the minimum salary requirement when defining these terms in regulation. This salary requirement has been moved to AS 23.10.055(b) (see Section 2).

This provision has not changed from the previous CS, but it has moved to a different section within the bill.

Section 5: Inserts the United States code reference to the Fair Labor Standards Act of 1938.

This section is new. Where any reference to a federal law is found within our statutes, our drafters would like the correct United States Code references inserted.

Section 6: Provides for an effective date of July 1, 2005.

This CS has included an effective date.

SB 131 Wage and Hour Act

Bill Introduction Points:

Alaska's Wage and Hour Act (AS 23.10.050) establishes provisions for overtime pay. There are exemptions to this (AS 23.10.055) for individuals in salaried positions employed as an executive, administrative, professional and salesman on a commission basis.

Currently the definitions of "executive capacity", "administrative capacity" and "professional capacity" are difficult to interpret.

In order to determine if an employee falls under one of these categories, one has to use criteria under what we term the "long test" or otherwise known as the "80/20 test"....that requires an employee and employer keep track of how much time they spend on any given duty. If they spend more that 20% of their time performing non-exempt work, then they qualify for overtime under the Wage and Hour Act. (40% in a retail position)

This "time-based" test is almost impossible for workers to track, and this confusion has lead to lawsuits at great expense to businesses and employees alike.

This bill sets out to clarify these definitions, making it easier for employers and employees to figure out when job duties do or do not qualify for overtime pay. It deletes the "80-20" test and clarifies the definitions of the 3

administrative capacities, transferring the criteria for the test from being “time-based” to “primary duties”-based.

This bill further clarifies the definitions by removing the term “supervisory” capacity from statutes as it has proven to be so ambiguous of a term. Its definition is now covered by the other 3 definitions...”executive, administrative and professional” capacities.

This bill will align Alaska with other states, eliminate ambiguities of the Wage and Hour Act and counteract frivolous lawsuits, protecting both the worker and the employer.

Today we have Attorney John Sedor here today to help us explain the finer details of this bill.

And we also have Mr. Grey Mitchell from Labor who can go over the language changes that came from their department for the CS.



Alaska State Legislature

Senator Con Bunde
Senate District P

Vice Chair: Senate Finance Committee
Chair: Senate Labor & Commerce Committee

SECTIONAL ANALYSIS CS for SB 131 ()

Title: An act amending the Alaska Wage and Hour Act as it relates to the employment of a person acting in a supervisory capacity; providing definitions for persons employed in administrative, executive and professional capacities, for persons working in the capacity of an outside salesman, and for persons working in the capacity of a salesman employed on a straight commission basis.

Section 1: Removes the provision that a person acting in a "supervisory capacity" is exempt from overtime. This sentence is being deleted, as "supervisors" will now be covered by the definitions found in Section 3 of the bill.

No changes in CS.

Section 2: Deletes the minimum salary requirement when defining these terms in regulation, as these terms will now be defined in statute (see Section 3).

No changes in CS.

Section 3: Defines "individual employed in an administrative capacity," "individual employed in an executive capacity," "individual employed in a professional capacity," "outside salesman," and "salesman employed on a straight commission basis."

Changes made by CS:

Page 3, Lines 17-22: Adds teachers and computer related occupations to definition of "professional capacity." These occupations are included in the current definitions and were inadvertently left out.

Page 3, Lines 26-28: Inserted the term "primary duty"

Page 3, Lines 29-30: Replaced "a person" with "an employee"

Page 3, Line 31: Inserted "customarily"

Page 4, Lines 6-7: Inserted a primary duties test.

STATE OF ALASKA

Department Of Labor and Workforce Development

FRANK H. MURKOWSKI, GOVERNOR

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Fax: (907)465-2784

OFFICE OF THE COMMISSIONER

April 14, 2005

The Honorable Norman Rokeberg
Alaska State Legislature
Capitol Building, Room 214
Juneau, Alaska 99801

Dear Representative Rokeberg:

I am pleased to inform you...

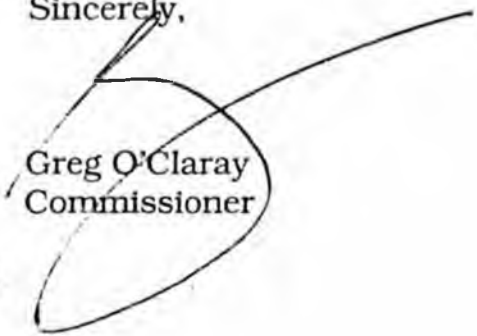
The Alaska Department of Labor and Workforce Development is in support of CSHB 182(FIN).

This bill will help to streamline the cumbersome process of determining whether an employee is exempt from Alaska's overtime pay requirements, while minimizing the potential for employee abuse by expanding the minimum salary provision. The minimum annual salary of \$29,744 will help to ensure that line workers are not artificially categorized in overtime exempt positions. I applaud your efforts to carefully balance industry needs for clearer overtime pay guidelines with the needs of Alaska's workforce.

We do not expect the proposed changes to have a significant impact on the department's operations. Less than five percent of wage claims filed with the department in FY 2004 involved issues associated with the overtime pay exemptions affected by this proposed legislation. Although the changes may initially produce more questions, the new standards are expected to be easier to explain.

If you need any additional assistance with this bill, please let me know.

Sincerely,


Greg O'Claray
Commissioner

cc: Grey Mitchell, Director LS&S

TESTIMONY ON SB 131

My name is Randy Carr. I formerly worked for the Alaska Department of Labor for 28 years. For the last 20 of those years I managed the Wage and Hour Administration for the Department. I am now a consultant in private practice. I am testifying on my own behalf.

It is my understanding that the intent of this bill is to simplify the white-collar exemptions and make them easier for everyone to understand and for employers to comply with. SB 131 essentially replaces the existing definitions for the so-called white-collar exemptions found in 8 AAC 15.910 with the new definitions recently adopted by the US DOL.

However, the language as proposed neglects some of the components of the federal regulations which if not addressed in some manner will have the opposite effect of that envisioned by its authors and will lead to more confusion and compliance difficulties for employers in the future.

No definition for "primary duty"

For example, one of the key elements of this bill and the new federal definitions abandons the old 80/20% duties test in favor of a "primary duty" test. The federal regulations define what a primary duty is. Although, the definition is not as clear as one might like it does provide guidance as to what sort of conditions meet its standards. SB 131 while using the term "primary duty," does not define it.

The new federal definition for "primary duty" is found on USDOL web page under Fair Pay Fact sheets. A copy attached for reference. Essentially "primary duty" means:

the principal, main, major or most important duty that the employee performs. Determination of an employee's primary duty must be based on all the facts in a particular case, with the major emphasis on the character of the employee's job as a whole.

The State Department of Labor has for years, as a matter of policy defined primary duty as an activity that is performed *more than 50%* of the time. This is at odds with the federal definition, which does not require a 50+% minimum for an activity to qualify as a primary duty. Certainly, the State can alter its policy or even issue defining regulations if it so desires, but both are subject to political winds and can be changed with little difficulty. If the legislative intent is to clarify the definitions for employers then why not define the essential terms so that everyone is on the same page?

One aspect of the old federal regulations was the "sole charge" exemption, which basically allowed a worker to perform up to 90% non-exempt work if they were the only person on duty and their "primary duty" was to perform work falling under the definition of the executive exemption. While the sole charge exemption has been removed from the

new federal regulations, its specter remains. The federal definition of "primary duty" does not consider time alone the sole test and will find a "primary duty" to exist where less than 50% of the time is dedicated to exempt activities.

The proposed definition of outside salesman seeks to adopt the federal definition including the primary duty test in lieu of the previous prohibition on non-exempt work exceeding 20% of the workweek. Again with no clear definition of primary duty the employer is strung out between the state law and federal law

No definition for "two or more employees"

A similar problem exists with the term "two or more employees" as that term is used in this bill to describe hiring and/or firing responsibilities for the executive exemption. The federal definition explains that two or more full time equivalent positions will qualify. So for example an executive could supervise four half-time employees and still meet the test. State policy and regulations are silent on this term.

In the interest of time I will forego a detailed explanation of other terms that are considered terms of art and are defined in the new federal regulations but are not defined in Alaska regulations. However, for the record a representative sampling would include:

"particular weight " as used in the Executive exemption;

"customarily and regularly" as used in the Executive and Outside Salesman exemptions;

"discretion and independent judgment" as used in the Administrative exemption;

"matters of significance" as used in the Administrative exemption; and others.

How each of these terms is defined is elemental to the understanding and application of the new definitions. Failure to assure clear and consistent understanding of these terms will only muddy the water for employer and employees and not result in the public being well served. Allowing for different interpretations between state and federal authorities will breed violations and liabilities for employers and confusing rules for everyone.

I would like to comment briefly on another thing that is missing in this bill, an exemption for the highly paid worker. One of the more intriguing new federal exemptions removes from eligibility for overtime any worker that receives \$100,000 or more per year. To qualify for this exemption the worker must perform office or non-manual work; be compensated a total of \$100,000 per year from all forms of compensation (compensation must however, include a salary component of the federal minimum salary of at least \$455 per week) and the individual must customarily and regularly perform at least one of the duties of an exempt administrative, executive, or professional employee.

This exemption was lauded by both labor and management and for eliminating potential litigation of what was viewed by some as unfavorable and unneeded overtime protection by setting the bar high enough to exclude those workers who should legitimately be exempt, while guaranteeing overtime eligibility to those performing manual and non-office work. I recommend this body consider adopting similar language for Alaska.



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FairPay Fact Sheet by Exemption

Fact Sheet #17B: Exemption for Executive Employees Under the Fair Labor Standards Act (FLSA)

This fact sheet provides general information on the exemption from minimum wage and overtime pay provided by Section 13(a)(1) of the Fair Labor Standards Act as defined by Regulations, 29 CFR Part 541.

The FLSA requires that most employees in the United States be paid at least the Federal minimum wage for all hours worked and overtime pay at time and one-half the regular rate of pay for all hours worked over 40 hours in a workweek.

However, Section 13(a)(1) of the FLSA provides an exemption from both minimum wage and overtime pay for employees employed as bona fide executive, administrative, professional and outside sales employees. Section 13(a)(1) and Section 13(a)(17) also exempt certain computer employees. To qualify for exemption, employees generally must meet certain tests regarding their job duties and be paid on a salary basis at not less than \$455 per week. Job titles do not determine exempt status. In order for an exemption to apply, an employee's specific job duties and salary must meet all the requirements of the Department's regulations.

See other fact sheets in this series for more information on the exemptions for administrative, professional, computer, and outside sales employees, and for more information on the salary basis requirement.

Executive Exemption

To qualify for the executive employee exemption, all of the following tests must be met:

- The employee must be compensated on a salary basis (as defined in the regulations) at a rate not less than \$455 per week;
- The employee's primary duty must be managing the enterprise, or managing a customarily recognized department or subdivision of the enterprise;
- The employee must customarily and regularly direct the work of at least two or more other full-time employees or their equivalent; and
- The employee must have the authority to hire or fire other employees, or the employee's suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees must be given particular weight.

Primary Duty

"Primary duty" means the principal, main, major or most important duty that the employee performs. Determination of an employee's primary duty must be based on all the facts in a particular case, with the major emphasis on the character of the employee's job as a whole.

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Management

Generally, "management" includes, but is not limited to, activities such as interviewing, selecting, and training of employees; setting and adjusting their rates of pay and hours of work; directing the work of employees; maintaining production or sales records for use in supervision or control; appraising employees' productivity and efficiency for the purpose of recommending promotions or other changes in status; handling employee complaints and grievances; disciplining employees; planning the work; determining the techniques to be used; apportioning the work among the employees; determining the type of materials, supplies, machinery, equipment or tools to be used or merchandise to be bought, stocked and sold; controlling the flow and distribution of materials or merchandise and supplies; providing for the safety and security of the employees or the property; planning and controlling the budget; and monitoring or implementing legal compliance measures.

Department or Subdivision

The phrase "a customarily recognized department or subdivision" is intended to distinguish between a mere collection of employees assigned from time to time to a specific job or series of jobs and a unit with permanent status and function.

Customarily and Regularly

The phrase "customarily and regularly" means greater than occasional but less than constant; it includes work normally done every workweek, but does not include isolated or one-time tasks.

Two or More

The phrase "two or more other employees" means two full-time employees or their equivalent. For example, one full-time and two half-time employees are equivalent to two full-time employees. The supervision can be distributed among two, three or more employees, but each such employee must customarily and regularly direct the work of two or more other full-time employees or the equivalent. For example, a department with five full-time nonexempt workers may have up to two exempt supervisors if each supervisor directs the work of two of those workers.

Particular Weight

Factors to be considered in determining whether an employee's recommendations as to hiring, firing, advancement, promotion or any other change of status are given "particular weight" include, but are not limited to, whether it is part of the employee's job duties to make such recommendations, and the frequency with which such recommendations are made, requested, and relied upon. Generally, an executive's recommendations must pertain to employees whom the executive customarily and regularly directs. It does not include occasional suggestions. An employee's recommendations may still be deemed to have "particular weight" even if a higher level manager's recommendation has more importance and even if the employee does not have authority to make the ultimate decision as to the employee's change in status.

Exemption of Business Owners

Under a special rule for business owners, an employee who owns at least a bona fide 20-percent equity interest in the enterprise in which employed, regardless of the type of business organization (e.g., corporation, partnership, or other), and who is actively engaged in its management, is considered a bona fide exempt executive.

Highly Compensated Employees

Highly compensated employees performing office or non-manual work and paid total annual compensation of \$100,000 or more (which must include at least \$455 per week paid on a salary or fee basis) are exempt from the FLSA if they customarily and regularly perform at least one of the duties of an exempt executive, administrative or professional employee identified in the standard tests for exemption.

Where to Obtain Additional Information

The Department of Labor provides this information to enhance public access to information on its programs. This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.

For more information regarding the FLSA, visit the Wage and Hour Division's web site at www.wagehour.dol.gov or call our toll-free help line, available from 8 a.m. to 5 p.m. in your time zone, at 1-866-4US-WAGE (1-866-487-9243).

Copies of Wage and Hour publications also may be obtained from any office of the Wage and Hour Division. To locate the nearest Wage and Hour Division office, telephone the toll-free help line or visit our web site for a complete listing of offices.

When the state laws differ from the federal FLSA, an employer must comply with the standard most protective to employees. Links to your state labor department can be found at www.dol.gov/esa/contracts/state_of.htm.

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FairPay Fact Sheet by Exemption

Fact Sheet #17C: Exemption for Administrative Employees Under the Fair Labor Standards Act (FLSA)

This fact sheet provides general information on the exemption from minimum wage and overtime pay provided by Section 13(a)(1) of the Fair Labor Standards Act as defined by Regulations, 29 CFR Part 541.

The FLSA requires that most employees in the United States be paid at least the Federal minimum wage for all hours worked and overtime pay at time and one-half the regular rate of pay for all hours worked over 40 hours in a workweek.

However, Section 13(a)(1) of the FLSA provides an exemption from both minimum wage and overtime pay for employees employed as bona fide executive, administrative, professional and outside sales employees. Section 13(a)(1) and Section 13(a)(17) also exempt certain computer employees. To qualify for exemption, employees generally must meet certain tests regarding their job duties and be paid on a salary basis at not less than \$455 per week. Job titles do not determine exempt status. In order for an exemption to apply, an employee's specific job duties and salary must meet all the requirements of the Department's regulations.

See other fact sheets in this series for more information on the exemptions for executive, professional, computer, and outside sales employees, and for more information on the salary basis requirement.

Administrative Exemption

To qualify for the administrative employee exemption, all of the following tests must be met:

- The employee must be compensated on a salary or fee basis (as defined in the regulations) at a rate not less than \$455 per week;
- The employee's primary duty must be the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers; and
- The employee's primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.

Primary Duty

"Primary duty" means the principal, main, major or most important duty that the employee performs. Determination of an employee's primary duty must be based on all the facts in a particular case, with the major emphasis on the character of the employee's job as a whole.

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Directly Related to Management or General Business Operations

To meet the "directly related to management or general business operations" requirement, an employee must perform work directly related to assisting with the running or servicing of the business, as distinguished, for example from working on a manufacturing production line or selling a product in a retail or service establishment. Work "directly related to management or general business operations" includes, but is not limited to, work in functional areas such as tax; finance; accounting; budgeting; auditing; insurance; quality control; purchasing; procurement; advertising; marketing; research; safety and health; personnel management; human resources; employee benefits; labor relations; public relations; government relations; computer network, Internet and database administration; legal and regulatory compliance; and similar activities.

Employer's Customers

An employee may qualify for the administrative exemption if the employee's primary duty is the performance of work directly related to the management or general business operations of the employer's customers. Thus, employees acting as advisors or consultants to their employer's clients or customers — as tax experts or financial consultants, for example — may be exempt.

Discretion and Independent Judgment

In general, the exercise of discretion and independent judgment involves the comparison and the evaluation of possible courses of conduct and acting or making a decision after the various possibilities have been considered. The term must be applied in the light of all the facts involved in the employee's particular employment situation, and implies that the employee has authority to make an independent choice, free from immediate direction or supervision. Factors to consider include, but are not limited to: whether the employee has authority to formulate, affect, interpret, or implement management policies or operating practices; whether the employee carries out major assignments in conducting the operations of the business; whether the employee performs work that affects business operations to a substantial degree; whether the employee has authority to commit the employer in matters that have significant financial impact; whether the employee has authority to waive or deviate from established policies and procedures without prior approval, and other factors set forth in the regulation. The fact that an employee's decisions are revised or reversed after review does not mean that the employee is not exercising discretion and independent judgment. The exercise of discretion and independent judgment must be more than the use of skill in applying well-established techniques, procedures or specific standards described in manuals or other sources.

Matters of Significance

The term "matters of significance" refers to the level of importance or consequence of the work performed. An employee does not exercise discretion and independent judgment with respect to matters of significance merely because the employer will experience financial losses if the employee fails to perform the job properly. Similarly, an employee who operates very expensive equipment does not exercise discretion and independent judgment with respect to matters of significance merely because improper performance of the employee's duties may cause serious financial loss to the employer.

Educational Establishments and Administrative Functions

The administrative exemption is also available to employees compensated on a salary or fee basis at a rate not less than \$455 a week and whose primary duty is performing administrative functions directly related to academic instruction or training in an educational

establishment. Academic administrative functions include operations directly in the field of education, and do not include jobs relating to areas outside the educational field. Employees engaged in academic administrative functions include: the superintendent or other head of an elementary or secondary school system, and any assistants responsible for administration of such matters as curriculum, quality and methods of instructing, measuring and testing the learning potential and achievement of students, establishing and maintaining academic and grading standards, and other aspects of the teaching program; the principal and any vice-principals responsible for the operation of an elementary or secondary school; department heads in institutions of higher education responsible for the various subject matter departments; academic counselors and other employees with similar responsibilities.

Highly Compensated Employees

Highly compensated employees performing office or non-manual work and paid total annual compensation of \$100,000 or more (which must include at least \$455 per week paid on a salary or fee basis) are exempt from the FLSA if they customarily and regularly perform at least one of the duties of an exempt executive, administrative or professional employee identified in the standard tests for exemption.

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FairPay Fact Sheet by Exemption

Fact Sheet #17F: Exemption for Outside Sales Employees Under the Fair Labor Standards Act (FLSA)

This fact sheet provides general information on the exemption from minimum wage and overtime pay provided by Section 13(a)(1) of the Fair Labor Standards Act as defined by Regulations, 29 CFR Part 541.

The FLSA requires that most employees in the United States be paid at least the Federal minimum wage for all hours worked and overtime pay at time and one-half the regular rate of pay for all hours worked over 40 hours in a workweek.

However, Section 13(a)(1) of the FLSA provides an exemption from both minimum wage and overtime pay for employees employed as bona fide executive, administrative, professional and outside sales employees. Section 13(a)(1) and Section 13(a)(17) also exempt certain computer employees. To qualify for exemption, employees generally must meet certain tests regarding their job duties and be paid on a salary basis at not less than \$455 per week, although the salary requirements do not apply to outside sales employees. Job titles do not determine exempt status. In order for an exemption to apply, an employee's specific job duties and salary must meet all the requirements of the Department's regulations.

See other fact sheets in this series for more information on the exemptions for executive, administrative, professional, and computer employees, and for more information on the salary basis requirement.

Outside Sales Exemption

To qualify for the outside sales employee exemption, all of the following tests must be met:

- The employee's primary duty must be making sales (as defined in the FLSA), or obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer; and
- The employee must be customarily and regularly engaged away from the employer's place or places of business.

The salary requirements of the regulation do not apply to the outside sales exemption. An employee who does not satisfy the requirements of the outside sales exemption may still qualify as an exempt employee under one of the other exemptions allowed by Section 13(a)(1) of the FLSA and the Part 541 regulations if all the criteria for the exemption is met.

Primary Duty

"Primary duty" means the principal, main, major or most important duty that the employee

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performs. Determination of an employee's primary duty must be based on all the facts in a particular case, with the major emphasis on the character of the employee's job as a whole.

Making Sales

"Sales" includes any sale, exchange, contract to sell, consignment for sales, shipment for sale, or other disposition. It includes the transfer of title to tangible property, and in certain cases, of tangible and valuable evidences of intangible property.

Obtaining Orders or Contracts for Services or for the Use of Facilities

Obtaining orders for "the use of facilities" includes the selling of time on radio or television, the solicitation of advertising for newspapers and other periodicals, and the solicitation of freight for railroads and other transportation agencies. The word "services" extends the exemption to employees who sell or take orders for a service, which may be performed for the customer by someone other than the person taking the order.

Customarily and Regularly

The phrase "customarily and regularly" means greater than occasional but less than constant; it includes work normally done every workweek, but does not include isolated or one-time tasks.

Away from Employer's Place of Business

An outside sales employee makes sales at the customer's place of business, or, if selling door-to-door, at the customer's home. Outside sales does not include sales made by mail, telephone or the Internet unless such contact is used merely as an adjunct to personal calls. Any fixed site, whether home or office, used by a salesperson as a headquarters or for telephonic solicitation of sales is considered one of the employer's places of business, even though the employer is not in any formal sense the owner or tenant of the property.

Promotion Work

Promotion work may or may not be exempt outside sales work, depending upon the circumstances under which it is performed. Promotional work that is actually performed incidental to and in conjunction with an employee's own outside sales or solicitations is exempt work. However, promotion work that is incidental to sales made, or to be made, by someone else is not exempt outside sales work.

Drivers Who Sell

Drivers who deliver products and also sell such products may qualify as exempt outside sales employees only if the employee has a primary duty of making sales. Several factors should be considered in determining whether a driver has a primary duty of making sales, including a comparison of the driver's duties with those of other employees engaged as drivers and as salespersons, the presence or absence of customary or contractual arrangements concerning amounts of products to be delivered, whether or not the driver has a selling or solicitor's license when required by law, the description of the employee's occupation in collective bargaining agreements, and other factors set forth in the regulation.

Where to Obtain Additional Information

The Department of Labor provides this information to enhance public access to information

the same light as official statements of position contained in the regulations.

For more information regarding the FLSA, visit the Wage and Hour Division's web site at www.wagehour.dol.gov or call our toll-free help line, available from 8 a.m. to 5 p.m. in your time zone, at 1-866-4US-WAGE (1-866-487-9243).

Copies of Wage and Hour publications also may be obtained from any office of the Wage and Hour Division. To locate the nearest Wage and Hour Division office, telephone the toll-free help line or visit our web site for a complete listing of offices.

When the state laws differ from the federal FLSA, an employer must comply with the standard most protective to employees. Links to your state labor department can be found at www.dol.gov/esa/contacts/state_of.htm

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Frances Perkins Building
200 Constitution Avenue, NW
Washington, DC 20210

1-866-4-USWAGE
TTY: 1-877-889-5627
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U.S. Department of Labor
Employment Standards
Administration Wage and Hour
Division



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FairPay Fact Sheet by Exemption

Fact Sheet #17H: Highly-Compensated Workers and the Part-541 Exemptions Under the Fair Labor Standards Act (FLSA)

The FLSA requires that most employees in the United States be paid at least the Federal minimum wage for all hour worked and overtime pay at time and one-half the regular rate of pay for all hours worked over 40 in a workweek. However, Section 13(a)(1) of the FLSA provides an exemption from both minimum wage and overtime pay for employees employed as bona fide executive, administrative, professional and outside sales employees. Section 13(a)(1) and Section 13(a)(17) also exempts certain computer employees. To qualify for exemption, employees must meet certain tests regarding their job duties and be paid on a salary basis at not less than \$455 per week.

Highly-Compensated Workers

The regulations contain a special rule for "highly-compensated" workers who are paid total annual compensation of \$100,000 or more. A highly compensated employee is deemed exempt under Section 13(a)(17) if:

1. The employee earns total annual compensation of \$100,000 or more, which includes at least \$455 per week paid on a salary basis;
2. The employee's primary duty includes performing office or non-manual work; and
3. The employee customarily and regularly performs at least one of the exempt duties or responsibilities of an exempt executive, administrative or professional employee.

Thus, for example, an employee may qualify as an exempt highly-compensated executive if the employee customarily and regularly directs the work of two or more other employees, even though the employee does not meet all of the other requirements in the standard test for exemption as an executive.

Total Annual Compensation

The required total annual compensation of \$100,000 or more may consist of commissions, nondiscretionary bonuses and other nondiscretionary compensation earned during a 52-week period, but does not include credit for board or lodging, payments for medical or life insurance, or contributions to retirement plans or other fringe benefits.

Make-up Payments and Prorating

There are special rules for prorating the annual compensation if employees work only part of the year, and which allow payment of a single lump-sum, make-up amount to satisfy the required annual amount at the end of the year and similar make-up payments to employees who terminate before the year ends.

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Customarily and Regularly

"Customarily and regularly" means greater than occasional but may be less than constant, and includes work normally and recurrently performed every workweek but does not include isolated or one-time tasks.

Where to Obtain Additional Information

The Department of Labor provides this information to enhance public access to information on its programs. This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations. For more information regarding the Fair Labor Standards Act, visit the Wage and Hour Division's web site at www.wagehour.dol.gov or call our toll-free help line, available 8 a.m. to 5 p.m. in your time zone, at 1-866-4US-WAGE (1-866-487-9243). Copies of Wage and Hour publications also may be obtained from any office of the Wage and Hour Division. To locate the nearest Wage and Hour Division office, telephone the toll-free help line or visit our web site for a complete listing of offices.

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Alaska State Legislature

Senator Con Bunde
Senate District P

Vice Chair - Senate Finance Committee
Chair - Senate Labor & Commerce Committee

SECTIONAL ANALYSIS CS for SB 131 ()

Title: An act amending the Alaska Wage and Hour Act as it relates to the employment of a person acting in a supervisory capacity; providing definitions for persons employed in administrative, executive and professional capacities, for persons working in the capacity of an outside salesman, and for persons working in the capacity of a salesman employed on a straight commission basis.

Section 1: Removes the provision that a person acting in a "supervisory capacity" is exempt from overtime. This sentence is being deleted, as "supervisors" will now be covered by the definitions found in Section 3 of the bill.

No changes in CS.

Section 2: Deletes the minimum salary requirement when defining these terms in regulation, as these terms will now be defined in statute (see Section 3).

No changes in CS.

Section 3: Defines "individual employed in an administrative capacity," "individual employed in an executive capacity," "individual employed in a professional capacity," "outside salesman," and "salesman employed on a straight commission basis."

Changes made by CS:

Page 3, Lines 17-22: Adds teachers and computer related occupations to definition of "professional capacity." These occupations are included in the current definitions and were inadvertently left out.

Page 3, Lines 26-28: Inserted the term "primary duty"

Page 3, Lines 29-30: Replaced "a person" with "an employee"

Page 3, Line 31: Inserted "customarily"

Page 4, Lines 6-7: Inserted a primary duties test.

24-LS0718\G
Craver
3/17/05

CS FOR SENATE BILL NO. 131(L&C)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY THE SENATE LABOR AND COMMERCE COMMITTEE

Offered:
Referred:

Sponsor(s): SENATE LABOR AND COMMERCE COMMITTEE

A BILL
FOR AN ACT ENTITLED

1 **"An Act amending the Alaska Wage and Hour Act as it relates to the employment of a**
2 **person acting in a supervisory capacity; providing definitions for persons employed in**
3 **administrative, executive, and professional capacities, for persons working in the**
4 **capacity of an outside salesman, and for persons working in the capacity of a salesman**
5 **employed on a straight commission basis."**

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

7 *** Section 1.** AS 23.10.060(a) is amended to read:

8 (a) An employer who employs employees engaged in commerce or other
9 business, or in the production of goods or materials in the state, may not employ an
10 employee for a workweek longer than 40 hours or for more than eight hours a day.
11 [THIS SECTION DOES NOT APPLY TO THE EMPLOYMENT OF A PERSON
12 ACTING IN A SUPERVISORY CAPACITY.]

13 *** Sec. 2.** AS 23.10.085(b) is amended to read:

1 (b) The regulations may, without limiting the generality of (a) of this section,
2 define terms used in AS 23.10.050 - 23.10.150, and restrict or prohibit industrial
3 homework or other acts or practices that the director finds appropriate to carry out the
4 purpose of AS 23.10.050 - 23.10.150, or to prevent the circumvention or evasion of
5 AS 23.10.050 - 23.10.150. [IF THE REGULATIONS DEFINING AN INDIVIDUAL
6 EMPLOYED IN A BONA FIDE EXECUTIVE, ADMINISTRATIVE, OR
7 PROFESSIONAL CAPACITY FOR PURPOSES OF AS 23.10.055 REQUIRE THAT
8 THE INDIVIDUAL RECEIVE A MINIMUM SALARY, THE REQUIRED
9 MINIMUM SALARY MUST BE TWO TIMES THE STATE MINIMUM WAGE
10 FOR THE FIRST 40 HOURS OF EMPLOYMENT EACH WEEK.]

11 * Sec. 3. AS 23.10.145 is amended by adding a new subsection to read:

12 (b) In AS 23.10.050 - 23.10.150,

13 (1) "individual employed in an administrative capacity" means an
14 employee

15 (A) who is compensated on a salary or fee basis at a rate of not
16 less than two times the state minimum wage for the first 40 hours of
17 employment each week, exclusive of board, lodging, or other facilities;

18 (B) whose primary duty is the performance of office or
19 nonmanual work directly related to the management or general business
20 operations of the employer or the employer's customers; and

21 (C) whose primary duty includes the exercise of discretion and
22 independent judgment with respect to matters of significance;

23 (2) "individual employed in an executive capacity" means an employee

24 (A) who is compensated on a salary or fee basis at a rate of not
25 less than two times the state minimum wage for the first 40 hours of
26 employment each week, exclusive of board, lodging, or other facilities;

27 (B) whose primary duty is management of the enterprise in
28 which the employee is employed or of a customarily recognized department or
29 subdivision of the enterprise;

30 (C) who customarily and regularly directs the work of two or
31 more other employees; and

1 (D) who has the authority to hire or fire other employees or
2 whose suggestions and recommendations as to the hiring, firing, advancement,
3 promotion, or any other change of status of other employees are given
4 particular weight;

5 (3) "individual employed in a professional capacity" means an
6 employee

7 (A) who is compensated on a salary or fee basis at a rate of not
8 less than two times the state minimum wage for the first 40 hours of
9 employment each week, exclusive of board, lodging, or other facilities;

10 (B) whose primary duty is to

11 (i) perform work requiring knowledge of an advanced
12 type in a field of science or learning customarily acquired by a
13 prolonged course of specialized intellectual instruction;

14 (ii) perform work requiring invention, imagination,
15 originality, or talent in a recognized field of artistic or creative
16 endeavor;

17 (iii) teach, tutor, instruct, or lecture in the activity of
18 imparting knowledge as a teacher certified or recognized as such in a
19 school or other educational establishment or institution; or

20 (iv) perform computer related occupations that are
21 exempted from the Fair Labor Standards Act under 29 C.F.R. Part
22 541.400;

23 (4) "outside salesman" means an employee

24 (A) who is customarily and regularly away from the employer's
25 place of business; and

26 (B) whose primary duty is making sales or contracts for sales,
27 consignments, or shipment, or obtaining orders for service or for use of
28 facilities for which consideration will be paid by the client or customer;

29 (5) "salesman employed on a straight commission basis" means an
30 employee

31 (A) who is customarily and regularly employed on the business

1 premises of the employer.

2 (B) who is compensated on a straight commission basis for the
3 purpose of making sales or contracts for sales, consignments, shipments, or
4 obtaining orders for services or the use of facilities for which a consideration
5 will be paid by the client or customer; and

6 (C) whose primary duty is making sales or contracts for sales,
7 consignments, shipments, or obtaining orders for service or the use of facilities
8 for which a consideration will be paid by the client or customer.



March 16, 2005

Senator Con Bunde
State Capital Building
Juneau, AK 99801
Sent via fax: (907) 465-3871

Dear Senator Bunde,

On behalf of the Alaska Hotel & Lodging Association and the Alaska Restaurant & Beverage Association I convey full support of SB 131. This is an important bill for our industry and for every employee of exempt workers because it provides for exempt status language that employers are easily able to understand and comply with. Currently, exempt status language requires that employers track and log how exempt workers spend their time by the hour to ensure appropriate compliance with the 80/20 or 60/40 provisions.

The definition of exempt status eligibility being based on primary job duty rather than the amount of time a worker spends on exempt vs. non exempt work mirrors the real life work roles of executive and professional salaried workers. The Federal definition of exempt worker was recently changed for the very same reason; it is burdensome to comply with and makes employers vulnerable to costly lawsuits.

A focus on primary job duties provides a clear definition of who is eligible to be exempt and who is not. Without this clear definition, many employers chose to make all employees hourly wage earners, denying the executive and professional management staff access to benefits that could otherwise be offered to them.

The provisions of SB 131 benefit both the employer and the employee. Thank you for your sponsorship of this bill.

My best regards,

A handwritten signature in cursive script that reads "Karen R. Rogina".

Karen R. Rogina
President & CEO



COASTAL HELICOPTERS, INC.

LOCATED ON THE JUNEAU AIRPORT
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(907) 789-5600 FAX (907) 789-7076

e-mail: coastal@gci.net
March 16, 2005

Senator Con Bunde, Chair
Senate Labor & Commerce Committee
Fax: 465-3871

Dear Senator Bunde:

SB 131

Thank you for sponsoring this important legislation. This is a request for your committee to approve SB131. This bill recognizes the cumbersome, if not impossible, task of tracking a professional employee's time hour by hour. As you know, the Federal FSLA has relieved employers of that burden and most states have done so also.

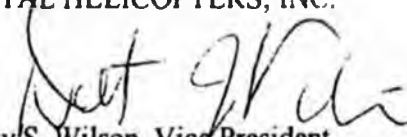
It is unrealistic to require additional paperwork hour by hour for tracking professional or supervisory employees. As I am sure you are aware, a supervisor or professional may start a task but demands of the job may require a change in task before completion. To have an employee at that level be required to write down each task beginning to end to see if it meets the "80/20" rule would create an additional burden on jobs that are often by their nature "burdensome."

The reason for the higher compensation for employees at the professional, administrative or supervisory level is the understanding that they have a job that needs to be accomplished and have the ability to decide the means for accomplishing that job.

Please approve this important legislation.

Thanks

Sincerely,
COASTAL HELICOPTERS, INC.


Dorothy S. Wilson, Vice President

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
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Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

March 15, 2005

SUBJECT: Sectional Summary of SB 131 (Work Order No. 24-LS0718\A)

TO: Senator Con Bunde
Attn: Jane Alberts

FROM: Barbara R. Craver 
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. Deletes the exemption for supervisory work from AS 23.10.060(a).

Section 2. AS 23.10.085(b) is amended because the definitions for individuals working in an executive, administrative or professional capacity are placed in statutes rather than regulations by sec. 3 of this bill.

Section 3. A new subsection is added to AS 23.10.145 to provide definitions for:

- individual employed in an administrative capacity;
- individual employed in an executive capacity;
- individual employed in a professional capacity;
- outside salesman; and
- salesman employed on a straight commission basis.

If I may be of further assistance, please advise.

BRC:med
05-183.med

Sectional Analysis

Senate Bill: SB 131

Short Title: Wage & Hour Act: Exec/Prof/Admin/Sales

Sponsor: Senate Labor and Commerce Committee

Current Version: SB 131

Contact: Jane Alberts, 465-4843

Summary:

- **Would clarify the definitions of "executive capacity", "administrative capacity" and "professional capacity" as defined in Administrative Code when determining overtime wages under the Wage and Hour Act**
- **Eliminates the "long test" also known as the "80/20" test and inserts more understandable definitions**
- **More clearly defines "exempt" and "non-exempt" work when determining payment of overtime**
- **Eliminates the definition and provision for "supervisory capacity" as this definition is assumed through the other definitions of "professional" and "executive" capacities**

Benefits:

- **Straightforward language brings clarity to employers and employees**
- **Will lead to great compliance with the Wage and Hour Act**
- **Reduce lawsuits emerging from ambiguity of the statute**

Background

- **Alaska law has historically exempted individuals employed in a "bona fide executive, administrative or professional" capacity. AS 23.10.055.**
- **The Alaska Administrative Code regulations, which defined these terms, were enacted in 1978.**
- **The definitions, when written, were similar to the federal exemptions in the Fair Labor Standards Act (FLSA).**

Current Definitions vs. New Definitions

Employees exempt from Wage and Hour Act	Current Definition	Senate Bill 131
Administrative	<ul style="list-style-type: none"> • Primary duties are management, supervising • Uses discretion and independent judgment • Performs work under only general supervision • Regularly and directly assists a proprietor or an exempt executive employee of the employer • Performs work along specialized or technical lines requiring special training • Salary at least 2.0 times minimum wage in first forty hours a week • 80/20 rule 	<ul style="list-style-type: none"> • Primary duty is performance of office or nonmanual work directly related to management or general business operations • Uses discretion and independent judgment • Salary is at least 2.0 times the minimum wage in first forty hours a week
Executive	<ul style="list-style-type: none"> • Primary duty is management of the business • Directs two or more employees • May hire and fire • Customarily and regularly exercises discretionary authority • Salary at least 2.0 times the minimum wage in first forty hours a week • 80/20 rule 	<ul style="list-style-type: none"> • Primary duty is management of the business • Directs two or more employees • May hire and fire • Salary at least 2.0 times the minimum wage in first forty hours a week
Professional	<ul style="list-style-type: none"> • Primary duty requires an advanced degree • Or, is creative in nature, teacher or computer-related • Uses discretion and independent judgment • Work is predominately intellectual and varied in character • Salary at least 2.0 times the minimum wage in first forty hours a week 	<ul style="list-style-type: none"> • Primary duty requires knowledge from prolonged course of specialized intellectual instruction • Or invention, imagination, originality or talent in artistic or creative endeavor • Salary at least 2.0 times the minimum wage in first forty hours a week

State by State Overtime Comparison

Completed Spring, 2004

By: John M. Sedor

Single Definitional Standard – 32 Jurisdictions

(These jurisdictions either do not have applicable wage/hour regulations or directly reference the overtime exemption definitions found in the Fair Labor Standards Act to define their own exemption from overtime requirements. In these jurisdictions, employers will only need to comply with one definitional standard – the federal standard – regarding overtime exemption issues.)

Alabama	Arizona	Delaware	District of Columbia
Florida	Georgia	Idaho	Indiana
Iowa	Kansas	Louisiana	Maine
Massachusetts	Michigan	Mississippi	Missouri
Nebraska	Nevada	New Hampshire	New Mexico
New York	North Carolina	Ohio	Oklahoma
South Carolina	South Dakota	Tennessee	Texas
Utah	Vermont	Virginia	Wyoming

“Old” Short Test – 8 Jurisdictions

(The “old” short test is similar to the new federal regulations with regard to the “time performing exempt functions” factor)

Connecticut	Illinois	Kentucky	Maryland
Montana	North Dakota ¹	Rhode Island ¹	West Virginia

¹ Definitional language contains minor variations from old federal test.

Unique Standards – 4 Jurisdictions

(Four states have a unique standard for determining overtime exemption definitions)

California	Colorado	Hawaii	Oregon	
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“Old” Long Test – 7 Jurisdictions

Alaska	Arkansas	Minnesota	New Jersey	Pennsylvania
Washington	Wisconsin ²			

² Definitional language contains minor variations from old federal test



Alaska State Legislature

Senator Con Bunde
Senate District P

Vice Chair, Senate Finance Committee
Chair, Senate Labor & Commerce Committee

SB 131
SPONSOR STATEMENT
A Senate Labor and Commerce bill

"An act amending the Alaska Wage and Hour Act as it relates to the employment of a person acting in a supervisory capacity; providing definitions for persons employed in administrative, executive and professional capacities, for persons working in the capacity of an outside salesman, and for persons working in the capacity of a salesman employed on a straight commission basis."

Alaska's Wage and Hour Act (AS 23.10.050-23.10.150) establishes the provisions for overtime compensation. AS 23.10.055 sets forth exceptions to the Wage and Hour Act. One of these exemptions is "an individual employed in a bona fide executive, administrative or professional capacity or in the capacity of an outside salesman or a salesman who is employed on a straight commission basis."

As currently defined in our administrative code, the definitions of "executive capacity," "administrative capacity," and "professional capacity" are confusing and difficult to interpret. In order to determine if someone is an executive, administrative or professional employee, you have to use what is known as the "long test." In addition to numerous other factors, the long test includes a calculation of the employee's time spent on "non-exempt work" (i.e. work that is not executive, administrative or professional). If an employee spends more than 20 percent (40 percent in retail or service establishments) of their time on non-exempt work, they become subject to the Wage and Hour Act and can qualify for overtime. The ambiguity within the definitions, including the implementation of the 80/20 test, has led to numerous wage and hour lawsuits, causing great expense to employers and employees.

HB 182 deletes the 80/20 test and sets forth definitions which are much more understandable. The simplicity provided by the new definitions will lead to greater compliance with the statutes. It is in the best interests of both the employer and employee that the statutes are straightforward, practical and easy to follow.

HB 182 also clarifies another area of confusion in the Wage and Hour provisions. Currently, a person acting in a "supervisory capacity" is exempt from payment of overtime, but not exempt from the full Wage and Hour Act. The definition of "supervisory capacity" in the regulations is also ambiguous and difficult to interpret. HB 182 removes this exemption from the statute. There are two reasons for deletion of the provision. The first reason is that due to the uncertainty in interpretation of the definition, the statute is currently unworkable. Secondly, the new definitions of "executive capacity" and "administrative capacity" would subsume a person working in a supervisory capacity. Therefore, there is no need to have a separate provision.

Enacting this bill will eliminate ambiguities, align Alaska more closely with other states and reduce the number of frivolous lawsuits, while protecting workers' rights to receive overtime.

Sponsor Statement



ALASKA

National Federation of Independent Business

Statement of Support for SB 131

March 14, 2005

Employers in Alaska must follow both the Federal Fair Labor Standards Act (FLSA) and the State Wage and Hour Act in setting employee wages. Federal and State law exempts executive, administrative and professional employees from overtime requirements of the wage and hour act. To determine if an employee is exempt, Alaska is one of a few states that continue to apply the "long test" which includes a calculation of the employee's time spent on non-exempt work. (The 80/20 test)*

Most states use the overtime exemption definitions found in the Fair Labor Standards Act relieving businesses of the burden of applying two systems. Senate Bill 131 removes the 80/20 test for salaried employees and implements a definition of duties test similar to the FLSA regulations.

Keeping track of a salaried employee's hourly activities is a cumbersome if not impossible task. SB 131 is an important bill for small business and large business alike. NFIB/Alaska strongly supports this simplification of the law.

* The 80/20 test requires an employer to keep track of how much time a salaried worker spends on non-exempt work. If the employee spends more than 20 percent (40 percent in retail or service businesses) of their time on non-exempt work, they are subject to the Wage and Hour Act and can qualify for overtime.

Please Support SB 131

Submitted by Thyes Shaub on behalf of NFIB/Alaska.

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: **SB131-DOLWD-WH-03-14-05**
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Department: **Labor and Workforce Development**
 Title: **Wage & Hour Act: Exec/Prof/Admin/Sales** RDU: **Labor Standards and Safety**
 Component: **Wage and Hour**
 Sponsor: **Senate L&C**
 Requester: **Senate L&C** Component Number: **345**

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: None
 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)

There is no anticipated financial impact to the department as a result of this legislation.

Prepared by: Grey Mitchell, Director Phone: 465-4855
 Division: Labor Standards and Safety Date/Time: 3/14/05 8:23 AM
 Approved by: Greg O'Claray, Commissioner Date: 3/14/2005
 Agency: Department of Labor and Workforce Development

EMPLOYERS BEWARE:

NEW WAGE AND HOUR REQUIREMENTS MAY SIGNIFICANTLY IMPACT ALASKA EMPLOYERS



Article by Bill Evans, partner,
Dorsey and Whitney LLP,
vice-chair, Anchorage Chamber
of Commerce

Both the federal and state wage and hour laws recently underwent significant revisions. It is very important

that Alaska employers understand these new requirements and ensure that their exempt employees are still in compliance with the new regulations and statutes. Even inadvertent departure from the new requirements can result in substantial liability.

Major Federal Revisions. On April 23, 2004, the United States Department of Labor published its long-anticipated revisions concerning the so-called white-collar exemptions (i.e., executive, administrative, professional, computer professional and outside salesperson). A key change to the federal system is that all employees who now earn less than \$455 per week—or \$23,660 per year—must receive overtime. Previously, employees had to earn only \$155 per week in order to qualify as exempt. The U.S. government estimates that more than 1.3 million workers nationwide will benefit from this mandated salary increase. A much fewer number of employees, estimated to be approximately 107,000 nationwide, may lose their current entitlement to overtime due to other changes.

By wholly eliminating the antiquated "long test" for determining exemptions, the Department of Labor did away with the last vestiges of the beleaguered 80/20 requirement that mandated that exempt employees could spend no more than 20 percent of their time engaged in nonexempt duties. The difficulty in objectively documenting compliance with this requirement made it a particularly vexing issue for many employers.

The Department of Labor also significantly revised the test used for determining whether an employee qualifies for an exemption based on his or her job duties. For example, administrative employees, who have always been required to exercise discretion and independent judgment in performing their duties, must now exercise such discretion and independent judgment with respect to "matters of significance." See 29 C.F.R. § 541.200.

Another notable change involves the definition of an "executive" employee. In addition to managing a

department or customarily recognized subdivision of the employer and regularly directing the work of at least two other employees, the new definition of an "executive" employee requires:

"The employee must have authority to hire or fire other employees or his/her suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees are given particular weight."

29 C.F.R. § 541.100.

Alaska Falls to Adopt Similar Changes. Choosing not to follow the lead of the federal government, the Alaska Legislature maintained its historic definitions for the white-collar exemptions. Accordingly, Alaska employers now must ensure that their exemptions comply with two significantly different systems. For instance, the problematic 80/20 requirement is still very much alive under Alaska law. It is, therefore, increasingly possible that many employees may be exempt under one system but not under the other.

Alaska Establishes Minimum Salary for Exempt Employees. Although the Alaska Legislature did not adopt any changes to the existing definitions for exempt employees, it did substantially increase the minimum salary that an exempt employee must earn. Moreover, it tied this minimum salary to the state's minimum wage, thereby guaranteeing that future increases in the minimum wage will also increase the minimum salary for exempt employees.

House Bill 255, which was submitted for Gov. Murkowski's signature on June 10, 2004, requires that any employee falling under the "administrative," "executive" or "professional" exemptions must earn a minimum salary of at least two times the state minimum wage for the first 40 hours of employment each week.

The current Alaska minimum wage is \$7.25 per hour. Accordingly, this new law will require that any exempt employee be paid a salary of \$580 per week—or \$30,160 per year. There is no evidence of any study being conducted to determine how many employees or employers in Alaska this new requirement will affect. This law will automatically go into effect 90 days after it is signed by the governor.

CS FOR SENATE BILL NO. 131(L&C)

*Passed Senate
Finance w/
amendment.
4/15/05*

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY THE SENATE LABOR AND COMMERCE COMMITTEE

Offered: 4/8/05
Referred: Finance

Sponsor(s): SENATE LABOR AND COMMERCE COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act amending the Alaska Wage and Hour Act as it relates to the employment of a
2 person acting in a supervisory capacity or in an administrative, executive, or
3 professional capacity; relating to definitions under the Alaska Wage and Hour Act and
4 providing definitions for persons employed in administrative, executive, and
5 professional capacities, for persons working in the capacity of an outside salesman, for
6 persons working in the capacity of a salesman employed on a straight commission basis,
7 and for persons that perform computer-related occupations; and providing for an
8 effective date."

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

10 * Section 1. AS 23.10.055 is amended to read:

11 Sec. 23.10.055. Exemptions; compensation of executives, administrators,
12 and professionals. The provisions of AS 23.10.050 - 23.10.150 do not apply to

13 (a) (1) an individual employed in agriculture, which includes farming in

(a) - required because page 4, line 9 adds new (b)

1 all its branches and, among other things, includes the cultivation and tillage of the soil,
 2 dairying, the production, cultivation, growing, and harvesting of any agricultural or
 3 horticultural commodities, the raising of livestock, bees, fur-bearing animals, or
 4 poultry, and any practices, including forestry and lumbering operations, performed by
 5 a farmer or on a farm as an incident to or in conjunction with the farming operations,
 6 including preparation for market, or delivery to storage or to market or to carriers for
 7 transportation to market;

8 (2) an individual employed in the catching, trapping, cultivating or
 9 farming, netting, or taking of any kind of fish, shellfish, or other aquatic forms of
 10 animal and vegetable life;

11 (3) an individual employed in the hand picking of shrimp;

12 (4) an individual employed in domestic service, including a baby-
 13 sitter, in or about a private home;

14 (5) an individual employed by the United States or by the state or a
 15 political subdivision of the state, except as provided in AS 23.10.065(b), including
 16 prisoners not on furlough detained or confined in prison facilities;

17 (6) an individual engaged in the nonprofit activities of a nonprofit
 18 religious, charitable, cemetery, or educational organization or other nonprofit
 19 organization where the employer-employee relationship does not, in fact, exist, and
 20 where services rendered to the organization are on a voluntary basis and are related
 21 only to the organization's nonprofit activities; for purposes of this paragraph,
 22 "nonprofit activities" means activities for which the nonprofit organization does not
 23 incur a liability for unrelated business income tax under 26 U.S.C. 513, as amended;

24 (7) an employee engaged in the delivery of newspapers to the
 25 consumer;

26 (8) an individual employed solely as a watchman or caretaker of a
 27 plant or property that is not in productive use for a period of four months or more;

28 (9) an individual employed

29 (A) in a bona fide executive, administrative, or professional
 30 capacity;

31 (B) [OR] in the capacity of an outside salesman or a salesman

1 who is employed on a straight commission basis; or

2 (C) as a computer systems analyst, computer programmer,
 3 software engineer, or other similarly skilled worker;

4 (10) an individual employed in the search for placer or hard rock
 5 minerals;

6 (11) an individual under 18 years of age employed on a part-time basis
 7 not more than 30 hours in a week;

8 (12) employment by a nonprofit educational or child care facility to
 9 serve as a parent of children while the children are in residence at the facility if the
 10 employment requires residence at the facility and is compensated on a cash basis
 11 exclusive of room and board at an annual rate of not less than

12 (A) \$10,000 for an unmarried person; or

13 (B) \$15,000 for a married couple;

14 (13) an individual who drives a taxicab, is compensated for taxicab
 15 services exclusively by customers of the service, whose written contractual
 16 arrangements with owners of taxicab vehicles, taxicab permits, or radio dispatch
 17 services are based upon flat contractual rates and not based on a percentage share of
 18 the individual's receipts from customers, and whose written contract with owners of
 19 taxicab vehicles, taxicab permits, or radio dispatch services specifically provides that
 20 the contract places no restrictions on hours worked by the individual or on areas in
 21 which the individual may work except to comply with local ordinances;

22 (14) a person who holds a license under AS 08.54 and who is
 23 employed by a registered guide or master guide licensed under AS 08.54, for the first
 24 60 workdays [WORK DAYS] in which the person is employed by the registered
 25 guide or master guide during a calendar year;

26 (15) an individual engaged in activities for a nonprofit religious,
 27 charitable, civic, cemetery, recreational, or educational organization where the
 28 employer-employee relationship does not, in fact, exist, and where services are
 29 rendered to the organization under a work activity requirement of AS 47.27 (Alaska
 30 temporary assistance program);

31 (16) an individual who

1 (A) provides emergency medical services only on a voluntary
2 basis;

3 (B) serves with a full-time fire department only on a voluntary
4 basis; or

5 (C) provides ski patrol services on a voluntary basis; or

6 (17) a student participating in a University of Alaska practicum
7 described under AS 14.40.065.

8 * Sec. 2. AS 23.10.055 is amended by adding new subsections to read:

9 (b) Notwithstanding (c) of this section, an individual employed in a bona fide
10 executive, administrative, or professional capacity shall be compensated on a salary or
11 fee basis at a rate of not less than two times the state minimum wage for the first 40
12 hours of employment each week, exclusive of board or lodging that is furnished by the
13 individual's employer.

14 (c) In (a)(9) of this section,

15 (1) "bona fide executive, administrative, or professional capacity" has
16 the meaning and shall be interpreted in accordance with 29 U.S.C. 201 - 219 (Fair
17 Labor Standards Act of 1938), as amended, or the regulations adopted under those
18 sections;

19 (2) "computer systems analyst, computer programmer, software
20 engineer, or other similarly skilled worker" has the meaning and shall be interpreted in
21 accordance with 29 U.S.C. 201 - 219 (Fair Labor Standards Act of 1938), as amended,
22 or the regulations adopted under those sections;

23 (3) "outside salesman" means an employee

24 (A) who is customarily and regularly away from the employer's
25 place of business; and

26 (B) whose primary duty is making sales or contracts for sales,
27 consignments, or shipment, or obtaining orders for service or for use of
28 facilities for which consideration will be paid by the client or customer;

29 (4) "salesman who is employed on a straight commission basis" means
30 an employee

31 (A) who is customarily and regularly employed on the business

1 premises of the employer;

2 (B) who is compensated on a straight commission basis for the
3 purpose of making sales or contracts for sales, consignments, shipments, or
4 obtaining orders for services or the use of facilities for which a consideration
5 will be paid by the client or customer; and

6 (C) whose primary duty is making sales or contracts for sales,
7 consignments, shipments, or obtaining orders for service or the use of facilities
8 for which a consideration will be paid by the client or customer.

9 * **Sec. 3.** AS 23.10.060(a) is amended to read:

10 (a) An employer who employs employees engaged in commerce or other
11 business, or in the production of goods or materials in the state, may not employ an
12 employee for a workweek longer than 40 hours or for more than eight hours a day.
13 [THIS SECTION DOES NOT APPLY TO THE EMPLOYMENT OF A PERSON
14 ACTING IN A SUPERVISORY CAPACITY.]

15 * **Sec. 4.** AS 23.10.085(b) is amended to read:

16 (b) The regulations may, without limiting the generality of (a) of this section,
17 define terms used in AS 23.10.050 - 23.10.150, and restrict or prohibit industrial
18 homework or other acts or practices that the director finds appropriate to carry out the
19 purpose of AS 23.10.050 - 23.10.150, or to prevent the circumvention or evasion of
20 AS 23.10.050 - 23.10.150 [IF THE REGULATIONS DEFINING AN INDIVIDUAL
21 EMPLOYED IN A BONA FIDE EXECUTIVE, ADMINISTRATIVE, OR
22 PROFESSIONAL CAPACITY FOR PURPOSES OF AS 23.10.055 REQUIRE THAT
23 THE INDIVIDUAL RECEIVE A MINIMUM SALARY, THE REQUIRED
24 MINIMUM SALARY MUST BE TWO TIMES THE STATE MINIMUM WAGE
25 FOR THE FIRST 40 HOURS OF EMPLOYMENT EACH WEEK.]

26 * **Sec. 5.** AS 23.10.1 is amended to read:

27 **Sec. 23.10.145. Definitions.** If not defined in this title or in regulations
28 adopted under this title, terms used in AS 23.10.050 - 23.10.150 shall be defined as
29 they are defined in 29 U.S.C. 201 - 219 ([THE FEDERAL] Fair Labor Standards Act
30 of 1938), as amended, or the regulations adopted under those sections [IT].

31 * **Sec. 6.** This Act takes effect July 1, 2005.

Senate Amendment

Offered by Senator Bunde
Amendment to CS for Senate Bill 131(L&C)

24-LS0718/F

1 Page 1, line 7, following "occupations;":

2 Insert "directing retrospective application of the provisions of this Act to work
3 performed before the effective date of this Act for purposes of claims filed on or after
4 the effective date of this Act, and disallowing retrospective application for purposes of
5 claims for that work that are filed before the effective date of this Act;"

6

7 Page 5, following line 30:

8 Insert a new bill section to read:

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

11 APPLICATION AS TO WORK PERFORMED BEFORE THE EFFECTIVE DATE
12 OF THIS ACT. (a) This Act applies retrospectively to work performed before the effective
13 date of this Act for purposes of any claim or proceeding based on AS 23.10.050 - 23.10.150
14 (Alaska Wage and Hour Act) that is filed on or after the effective date of this Act.

15 (b) This Act does not apply to work performed before the effective date of this Act for
16 purposes of any claim or proceeding based on AS 23.10.050 - 23.10.150 that is filed before
17 the effective date of this Act."

18

19 Renumber the following bill section accordingly.