

This information is provided to attendees at the Annual Workers' Compensation Educational Conference. These statutes and rules are provided for the convenience of the user and no representation or warranty is made that the information is current or accurate. With the printing of these statutory and, where applicable, regulatory provisions, we attempt to be correct and accurate. We will correct any errors or omissions and we encourage readers to inform us of any errors by emailing stephanie@wci360.com. For the "official text" of each state's law, please refer to the promulgated statutory provisions of each such state.

Alaska Statutes

Title 23. Labor and Workers' Compensation

Chapter 30. Alaska Workers' Compensation Act

Section 1. Intent of the Legislature and Construction of Chapter.

Section 2. Division of Worker's Compensation; Director.

Section 5. Alaska Workers' Compensation Board.

Section 7. Workers' Compensation Appeals Commission.

Section 8. Powers and Duties of the Commission.

Section 9. Powers and Duties of the Chair of the Commission.

Section 10. Coverage.

Section 11. Extraterritorial Coverage.

Section 12. Agreements in Regard to Claims.

Section 15. Compensation Where Third Persons Are Liable.

Section 17. Immunity For Third-Party Design Professional.

Section 20. Chapter Part of Contract of Hire.

Section 22. False Statements By Employee.

Section 25. Approval and Coverage of Insurance Policies.

Section 30. Required Policy Provisions.

Section 35. Adjustment of Insurance Rates.

Section 40. Second Injury Fund.

Section 41. Rehabilitation of Injured Workers.

Section 45. Employer's Liability For Compensation.

Section 50. Employer's Liability Despite Negligence of a Third Party.

Section 55. Exclusiveness of Liability.

Section 60. Election of Direct Payment Presumed.

Section 65. Employer's Record of Injuries.

Section 70. Report of Injury to Division.

Section 75. Employer's Liability to Pay.

Section 80. Employer's Failure to Insure.

Section 82. Workers' Compensation Benefits Guaranty Fund.

Section 85. Duty of Employer to File Evidence of Compliance.

Section 90. Self-Insurance Certificates.

Section 92. Volunteer Ambulance Attendants', Police Officers', and Fire Fighters' Insurance.

Section 95. Medical Treatments, Services, and Examinations.

Section 97. Fees for Medical Treatment and Services.

Section 100. Notice of Injury or Death.

Section 105. Time For Filing of Claims.

Section 106. [Renumbered as AS 23.30.011

Section 107. Release of Information.

Section 108. Prehearings On Discovery Matters; Objections to Requests For Release of Information; Sanctions For Noncompliance.

Section 110. Procedure On Claims.

Section 115. Attendance and Fees of Witnesses.

Section 120. Presumptions.

Section 122. Credibility of Witnesses.

Section 125. Administrative Review of Compensation Order.

Section 127. Appeals to Commission.

Section 128. Commission Proceedings.

Section 129. Judicial Review of Commission Orders.

Section 130. Modification of Awards.

Section 135. Procedure Before the Board.

Section 140. Appointment of Guardian By Court.

Section 145. Attorney Fees.

Section 150. Commencement of Compensation.

Section 155. Payment of Compensation.

Section 160. Assignment and Exemption of Claims.

Section 165. Lien.

Section 170. Collection of Defaulted Payments.

Section 172. Benefit Adjustments. [Repealed, Sec. 11 Ch 75 SLA 1977].

Section 175. Rates of Compensation.

Section 180. Permanent Total Disability.

Section 185. Compensation For Temporary Total Disability.

Section 187. Effect of Unemployment Benefits.

Section 190. Compensation For Permanent Partial Impairment; Rating Guides.

Section 191. Expenses For Rehabilitating Injured Employees. [Repealed, Sec. 27 Ch 93 SLA 1982. For Current Law Concerning Rehabilitation of Injured Workers, See AS [23.30.041](#)]

Section 195. Survival of the Right to Compensation.

Section 200. Temporary Partial Disability.

Section 205. Injury Combined With Preexisting Impairment.

Section 210. Determination of Wage-Earning Capacity. [Repealed, Sec. 44 Ch 79 SLA 1988].

Section 215. Compensation For Death.

Section 220. Determination of Spendable Weekly Wage.

Section 224. Coordination of Benefits.

Section 225. Social Security and Pension or Profit Sharing Plan Offsets.

Section 230. Persons Not Covered.

Section 235. Cases in Which No Compensation is Payable.

Section 237. High School Students in Work-Study Programs as Employees of the State.

Section 238. Volunteer Emergency Medical Technicians as Employees.

Section 239. Sole Proprietors and Partners as Employees.

Section 240. Officers of Corporations, Municipal Corporations, and Nonprofit Corporations and Members of Limited Liability Companies as Employees.

Section 241. Special Officers as Employees.

Section 242. Members of State Boards and Commissions as Employees.

Section 243. Extending Coverage to Certain Fire Fighters.
Section 244. Emergency and Disaster Relief Forces as State Employees.
Section 245. Invalid Agreements.
Section 247. Discrimination Prohibited.
Section 250. Penalties For Fraudulent or Misleading Acts; Damages in Civil Actions.
Section 255. Penalty For Failure to Pay Compensation.
Section 260. Penalty For Receiving Unapproved Fees and Soliciting.
Section 263. Immunity From Civil Liability For Workplace Safety Inspections.
Section 265. [Renumbered as AS 23.30.395].
Section 270. [Renumbered as AS 23.30.400].
Section 280. Investigation of Fraud; Staffing.
Section 395. Definitions.
Section 400. Short Title.

AS 23.30.001. Intent of the Legislature and Construction of Chapter.

It is the intent of the legislature that

- (1) this chapter be interpreted so as to ensure the quick, efficient, fair, and predictable delivery of indemnity and medical benefits to injured workers at a reasonable cost to the employers who are subject to the provisions of this chapter;
- (2) workers' compensation cases shall be decided on their merits except where otherwise provided by statute;
- (3) this chapter may not be construed by the courts in favor of a party;
- (4) hearings in workers' compensation cases shall be impartial and fair to all parties and that all parties shall be afforded due process and an opportunity to be heard and for their arguments and evidence to be fairly considered.

AS 23.30.002. Division of Worker's Compensation; Director.

The division of workers' compensation is established in the department. The commissioner shall appoint the director of the division of workers' compensation.

AS 23.30.005. Alaska Workers' Compensation Board.

(a) The Alaska Workers' Compensation Board consists of a southern panel of three members sitting for the first judicial district, two northern panels of three members sitting for the second and fourth judicial districts, five southcentral panels of three members each sitting for the third judicial district, and one panel of three members that may sit in any judicial district. Each panel must include the commissioner of labor and workforce development or a hearing officer designated to represent the commissioner, a representative of industry, and a representative of labor. The latter two members of each panel shall be appointed by the governor and are subject to confirmation by a majority of the members of the legislature in joint session. The board shall by regulation provide procedures to avoid conflicts and the appearance of impropriety in hearings.

(b) The commissioner shall act as chair and executive officer of the board and chair of each panel. The commissioner may designate a representative to act for the commissioner as chair and executive officer of the board. The commissioner may designate hearing officers to serve as chairs of panels for hearing claims.

(c) The governor shall appoint the members of the panels. Each member, except the commissioner of labor and workforce development, serves a term of three years. The term of a management member and the term of a labor member of each panel may not expire in the same year. The management and labor members are entitled to compensation in the amount of \$50 a day for each day or portion of a day spent in actual meeting or on authorized official business incidental to their duties and to all other transportation and per diem as provided by law.

(d) [Repealed, Sec. 9 ch 77 SLA 1979].

(e) A member of one panel may serve on another panel when the commissioner considers it necessary for the prompt administration of this chapter. Transfers shall be allowed only if a labor or management representative replaces a counterpart on the other panel.

(f) Two members of a panel constitute a quorum for hearing claims and the action taken by a quorum of a panel is considered the action of the full board.

(g) A claim may be heard by only one panel.

(h) The department shall adopt rules for all panels, and procedures for the periodic selection, retention, and removal of both rehabilitation specialists and physicians under AS 23.30.041 and 23.30.095, and shall adopt regulations to carry out the provisions of this chapter. The department may by regulation provide for procedural, discovery, or stipulated matters to be heard and decided by the commissioner or a hearing officer designated to represent the commissioner rather than a panel. If a procedural, discovery, or stipulated matter is heard and decided by the commissioner or a hearing officer designated to represent the commissioner, the action taken is considered the action of the full board on that aspect of the claim. Process and procedure under this chapter shall be as summary and simple as possible. The department, the board or a member of it may for the purposes of this chapter subpoena witnesses, administer or cause to be administered oaths, and may examine or cause to have examined the parts of the books and records of the parties to a proceeding that relate to questions in dispute. The superior court, on application of the department, the board or any members of it, shall enforce the attendance and testimony of witnesses and the production and examination of books, papers, and records.

(i) The department may adopt regulations concerning the medical care provided for in this chapter. In addition to the reports required of physicians under AS 23.30.095 (a) - (d), the board may direct a physician or hospital rendering medical treatment or service under this chapter to furnish to the board periodic reports of treatment or services on forms procured from the board.

(j) The board may also arrange to have hearings held by the commission, officer, or tribunal having authority to hear cases arising under the workers' compensation law of any other state, of the District of Columbia, or of any territory of the United States. The testimony and proceedings at the hearing shall be reported to the board and are a part of the record in the case. Evidence taken at the hearing is subject to rebuttal upon final hearing before the board.

(k) The board shall notify the contracting agency of the state or of a political subdivision of the state when it revokes the self-insurance certificate of an employer holding a contract with the state or a political subdivision of the state.

(l) Regulations adopted by the department under (h) and (i) of this section become effective only after approved by a majority of the full board.

(m) The board may by regulation delegate authority to the director to assist the board in administering and enforcing this chapter.

23.30.007. Workers' Compensation Appeals Commission.

(a) There is established in the Department of Labor and Workforce Development the Workers' Compensation Appeals Commission. The commission has jurisdiction to hear appeals from final decisions and orders of the board under this chapter. Jurisdiction of the commission is limited to administrative appeals arising under this chapter.

(b) The commission consists of five members appointed by the governor and confirmed by a majority of the members of the legislature in joint session. The members shall be appointed as follows:

(1) a member appointed as chair who meets the requirements of (c)(2) of this section;

(2) two members who meet the qualifications in (c)(1) of this section and, because of their employment or affiliations, may be classified as a representative of employees covered by this chapter;

(3) two members who meet the qualifications in (c)(1) of this section and, because of their employment or affiliations, may be classified as a representative of employers covered by this chapter.

(c) To be eligible for appointment under this section,

(1) a member must

(A) be a citizen of the United States;

(B) be a resident of the state for the five years preceding the appointment;

(C) have not been convicted of either a

(i) felony; or

(ii) misdemeanor related to workers' compensation; and

(D) have served for a total of not less than 18 months as a member of the Alaska Workers' Compensation Board;

(2) the chair must

(A) meet the criteria specified in (1) of this subsection, except for the requirement in (1)(D) of this subsection;

(B) be licensed to practice law in this state and be a member in good standing with the Alaska Bar Association; and

(C) have engaged in the active practice of law for at least five years with experience in workers' compensation in this state.

(d) An individual seeking appointment as a member or as chair shall submit an application to the chief administrative law judge appointed under AS 44.64.010. The application must show that the applicant meets requirements in (c) of this section that are applicable to the position for which the application is submitted. For each vacant position, other than the chair, the chief administrative law judge shall select not less than two eligible individuals and submit the names of those individuals to the governor. For the chair, the chief administrative law judge shall select not less than three for submission to the governor.

(e) The term of service on the commission is five years. A member may be reappointed so long as the reappointment complies with the provisions of this section, including the application and appointment process described in (d) of this section.

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

(g) A member may act and receive compensation under this section from the date of appointment until confirmation or rejection by the legislature.

(h) The chair of the commission is in the exempt service under AS 39.25.110 and shall receive a monthly salary that is not less than Step A nor more than Step F of Range 27 of the salary schedule in AS 39.27.011(a) for Anchorage, Alaska.

(i) An appeal to the commission shall be heard and decided by a three-member panel of the commission. An appeal panel shall consist of the chair of the commission and two members of the commission assigned by the chair, one member classified as representing employees, and one member classified as representing employers. At other meetings to conduct commission business, the number of commission members classified as representing employees must equal the number of commission members classified as representing employers. The chair of the commission and two representative members of the commission, one classified as representing employees and one classified as representing employers, constitute a quorum.

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

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

(2) conviction of a felony;

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

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

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

(k) Representative members are entitled to compensation in the amount of \$400 a day for each day spent in actual hearing of appeals or on authorized official business incidental to their duties, and to transportation and per diem as provided by law. Compensation shall be paid pro rata for each portion of a day spent in actual hearing of appeals or on authorized official business.

(l) A member of the commission may not hear an appeal under this chapter if

(1) a party is an employee or was, in the past seven years, an employee of the commission member or of a business that employs the commission member; this paragraph does not apply to the chair of the commission when the State of Alaska is or was the employer of a party;

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

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

(4) the commission member is unable to be fair, impartial, and unbiased toward the appeal participants; or

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

(m) If the chair of the commission is unable to hear an appeal for reasons of absence or illness in excess of 10 days, or for reasons set out in (l) of this section, the chief administrative law judge appointed under AS 44.64.010 shall appoint a person who meets the qualifications of this section to serve as chair to hear the appeal as chair pro tempore. The person shall receive the compensation provided in (k) of this section. Appointment of a chair pro tempore does not require legislative confirmation.

(n) Each member of the commission, before entering upon the duties of office, shall take and subscribe to the oath prescribed for principal officers of the state. A member of the commission, during tenure, may not

(1) hold or campaign for elective office;

(2) be an officer of a political party, political committee, or group;

(3) permit the member's name to be used, or make any contributions whatsoever, in support of or in opposition to a candidate or proposition or question that appears on any ballot in the state including but not limited to that of a municipality; however, contributions may be made to a candidate for the office of President of the United States;

(4) participate in any way in an election campaign or participate in or contribute to any political party; or

(5) lobby, employ, or assist a lobbyist.

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

(p) Notwithstanding (e) of this section, the terms of the individuals initially appointed to the commission shall be as follows:

- (1)** the chair, five years;
- (2)** one member, four years;
- (3)** one member, three years;
- (4)** one member, two years;
- (5)** one member, one year.

AS 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.

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

AS 23.30.009. Powers and Duties of the Chair of the Commission.

(a) The chair of the commission shall exercise general supervision over the office of the commission and over appeals and shall direct the administrative functions of the commission. The chair of the commission shall serve as the executive officer of the commission and shall have authority in all administrative matters relating to the members. The chair may

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

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

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

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

(5) prepare an annual budget of the commission.

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

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

(d) The chair of the commission shall devote full time to the duties of the chair of the commission and may not engage in any other employment or business. The chair of the commission may not hold any other office or position under the United States, this state, any municipality or political subdivision of this state, or any tribal government or corporation. The chair of the commission may not hold office or position in a partisan political organization or party.

23.30.010. Coverage.

(a) Except as provided in (b) of this section, compensation or benefits are payable under this chapter for disability or death or the need for medical treatment of an employee if the disability

or death of the employee or the employee's need for medical treatment arose out of and in the course of the employment. To establish a presumption under AS 23.30.120(a)(1) that the disability or death or the need for medical treatment arose out of and in the course of the employment, the employee must establish a causal link between the employment and the disability or death or the need for medical treatment. A presumption may be rebutted by a demonstration of substantial evidence that the death or disability or the need for medical treatment did not arise out of and in the course of the employment. When determining whether or not the death or disability or need for medical treatment arose out of and in the course of the employment, the board must evaluate the relative contribution of different causes of the disability or death or the need for medical treatment. Compensation or benefits under this chapter are payable for the disability or death or the need for medical treatment if, in relation to other causes, the employment is the substantial cause of the disability or death or need for medical treatment.

(b) Compensation and benefits under this chapter are not payable for mental injury caused by mental stress, unless it is established that (1) the work stress was extraordinary and unusual in comparison to pressures and tensions experienced by individuals in a comparable work environment; and (2) the work stress was the predominant cause of the mental injury. The amount of work stress shall be measured by actual events. A mental injury is not considered to arise out of and in the course of employment if it results from a disciplinary action, work evaluation, job transfer, layoff, demotion, termination, or similar action taken in good faith by the employer.

AS 23.30.011. Extraterritorial Coverage.

(a) If an employee, while working outside the territorial limits of this state, suffers an injury on account of which the employee, or in the event of the employee's death, the employee's dependents, would have been entitled to the benefits provided by this chapter had the injury occurred in this state, the employee or, in the event of the employee's death resulting from the injury, the employee's dependents shall be entitled to the benefits provided by this chapter, if at the time of the injury

(1) the employee's employment is principally localized in this state;

(2) the employee is working under a contract of hire made in this state in employment not principally localized in any state;

(3) the employee is working under a contract of hire made in this state in employment principally localized in another state whose workers' compensation law is not applicable to the employee's employer; or

(4) the employee is working under a contract of hire made in this state for employment outside the United States and Canada.

(b) The payment or award of benefits under the workers' compensation law of another state, territory, province, or foreign nation to an employee or the employee's dependents otherwise entitled on account of the injury or death to the benefits under this chapter is not a bar to a claim for benefits under this chapter; however, a claim under this chapter must be filed within the time limits set out in this chapter. If compensation is paid or awarded under this section

(1) the medical and related benefits furnished or paid for by the employer under another workers' compensation law on account of the injury or death shall be credited against the medical and related benefits to which the employee would have been entitled under this chapter had claim been made solely under this chapter;

(2) the amount of all income benefits paid or awarded the employee under another workers' compensation law shall be credited against the total amount of income benefits which would have been due the employee under this chapter had claim been made solely under this chapter;

(3) the total amount of death benefits paid or awarded under another workers' compensation law shall be credited against the total amount of death benefits due under this chapter.

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

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

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

(3) if the employer is a qualified self-insurer under the workers' compensation law of the other state, the employer, upon submission of evidence satisfactory to the board of the employer's ability to meet the employer's liability to the employee under this chapter, shall be considered to be a qualified self-insurer under this chapter;

(4) if the employer's liability under the workers' compensation law of another state is insured, the employer's carrier, as to the employee or the employee's dependents only, shall be considered to be an insurer authorized to write insurance under and be subject to this chapter; however, unless its contract with the employer requires it to pay an amount equivalent to the compensation benefits provided by this chapter, its liability for income benefits or medical and related benefits may not exceed the amounts of the benefits for which the insurer would have been liable under the workers' compensation law of the other state;

(5) if the amount for which the employer's insurance is liable under (3) and (4) of this subsection is less than the total of the compensation benefits to which the employee is entitled

under this chapter, the board may, if it considers it necessary, require the employer to file security satisfactory to the board to secure the payment of benefits due the employee or the employee's dependents under this chapter; and

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

(d) In this section

(1) "carrier" includes an insurance company licensed to write workers' compensation insurance in a state of the United States or a state or provincial fund that insures employers against their liabilities under a workers' compensation law;

(2) a person's employment is "principally localized" in this or another state when (A) the person's employer has a place of business in this or the other state and the person regularly works at or from that place of business, or (B), if (A) of this paragraph is not applicable, the person is domiciled and spends a substantial part of the person's working time in the service of an employer in this or the other state; an employee whose duties require the employee to travel regularly in the service of an employer in this and one or more other states may, by written agreement with the employer, provide that the employment is principally localized in this or another state, and unless the other state refuses jurisdiction, the agreement shall be given effect under this chapter;

(3) "state" includes a state of the United States, the District of Columbia, or a province of Canada;

(4) "United States" includes only the states of the United States and the District of Columbia;

(5) "workers' compensation law" includes "occupational disease law."

AS 23.30.012. Agreements in Regard to Claims.

(a) At any time after death, or after 30 days subsequent to the date of the injury, the employer and the employee or the beneficiary or beneficiaries, as the case may be, have the right to reach an agreement in regard to a claim for injury or death under this chapter, but a memorandum of the agreement in a form prescribed by the director shall be filed with the division. Otherwise, the agreement is void for any purpose. Except as provided in (b) of this section, an agreement filed with the division discharges the liability of the employer for the compensation, notwithstanding the provisions of AS 23.30.130, 23.30.160, and 23.30.245, and is enforceable as a compensation order.

(b) The agreement shall be reviewed by a panel of the board if the claimant or beneficiary is not represented by an attorney licensed to practice in this state, the beneficiary is a minor or incompetent, or the claimant is waiving future medical benefits. If approved by the board, the agreement is enforceable the same as an order or award of the board and discharges the liability of the employer for the compensation notwithstanding the provisions of AS 23.30.130, 23.30.160, and 23.30.245. The agreement shall be approved by the board only when the terms conform to the provisions of this chapter and, if it involves or is likely to involve

permanent disability, the board may require an impartial medical examination and a hearing in order to determine whether or not to approve the agreement. A lump-sum settlement may be approved when it appears to be to the best interest of the employee or beneficiary or beneficiaries.

AS 23.30.015. Compensation Where Third Persons Are Liable.

(a) If on account of disability or death for which compensation is payable under this chapter the person entitled to the compensation believes that a third person other than the employer or a fellow employee is liable for damages, the person need not elect whether to receive compensation or to recover damages from the third person.

(b) Acceptance of compensation under an award in a compensation order filed by the board operates as an assignment to the employer of all rights of the person entitled to compensation and the personal representative of a deceased employee to recover damages from the third person unless the person or representative entitled to compensation commences an action against the third person within one year after an award.

(c) Payment of compensation into the second-injury fund as a result of death operates as an assignment to the employer of all rights of the representative of the deceased to recover damages from the third person.

(d) An employer under an assignment may either institute proceedings for the recovery of damages or may compromise with a third person, either without or after instituting an action.

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

(1) the employer shall retain an amount equal to

(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 shall 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.

(f) Even if an employee, the employee's representative, or the employer brings an action or settles a claim against the third person, the employer shall pay the benefits and compensation required by this chapter.

(g) If the employee or the employee's representative recovers damages from the third person, the employee or representative shall promptly pay to the employer the total amounts paid by the employer under (e)(1)(A) - (C) of this section insofar as the recovery is sufficient after deducting all litigation costs and expenses. Any excess recovery by the employee or representative shall be credited against any amount payable by the employer thereafter. If the employer is allocated a percentage of fault under AS 09.17.080 , the amount due the employer under this subsection shall be reduced by an amount equal to the employer's equitable share of damages assessed under AS 09.17.080 (c).

(h) If compromise with a third person is made by the person entitled to compensation or the representative of that person of an amount less than the compensation to which the person or representative would be entitled, the employer is liable for compensation stated in (f) of this section only if the compromise is made with the employer's written approval.

(i) If the employer is insured and the carrier has assumed the payment of compensation, the carrier shall be subrogated to all the rights of the employer.

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

AS 23.30.017. Immunity For Third-Party Design Professional.

(a) A person entitled to compensation under this chapter as a result of injury occurring at the job site of a construction project may not bring a civil action to recover damages for that injury against a design professional or an employee of a design professional who provides professional services for the construction project.

(b) This section does not apply to a person receiving compensation under this chapter who is injured at a job site at which the design professional or employee of the design professional

(1) specifically assumed responsibility for job site safety practices under a contract;

(2) actually exercises control over the premises where the injury occurred; or

(3) prepared design plans or specifications, the plans or specifications contributed to the injury, and the plans or specifications were prepared negligently, recklessly, or with intentional misconduct.

(c) In this section,

(1) "design professional" means a person registered under AS 08.48 as an architect, engineer, or land surveyor;

(2) "professional services" means services provided by a design professional that are within the scope of services for which the design professional is registered.

AS 23.30.020. Chapter Part of Contract of Hire.

This chapter constitutes part of every contract of hire, express or implied, and every contract of hire shall be construed as an agreement on the part of the employer to pay and on the part of the employee to accept compensation in the manner provided in this chapter for all personal injuries sustained.

AS 23.30.022. False Statements By Employee.

An employee who knowingly makes a false statement in writing as to the employee's physical condition in response to a medical inquiry, or in a medical examination, after a conditional offer of employment may not receive benefits under this chapter if

- (1) the employer relied upon the false representation and this reliance was a substantial factor in the hiring; and
- (2) there was a causal connection between the false representation and the injury to the employee.

AS 23.30.025. Approval and Coverage of Insurance Policies.

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

(b) All policies of insurance companies insuring the payment of compensation under this chapter are conclusively presumed to cover all the employees and the entire compensation liability of the insured employer employed at or in connection with the business of the employer carried on, maintained, or operated at the location or locations set forth in such policy or agreement. A provision in a policy attempting to limit or modify the liability of the company issuing it is wholly void except as provided in this section.

(c) An insurer extending coverage required under this chapter by specifying Alaska in the other states section or similar provision of the insurance policy shall provide notice to the department under AS 23.30.085.

AS 23.30.030. Required Policy Provisions.

A policy of a company insuring the payment of compensation under this chapter is considered to contain the provisions set out in this section.

(1) The insurer assumes in full all the obligations to pay physician's fees, nurse's charges, hospital services, hospital supplies, medicines, prosthetic devices, transportation charges to the nearest point where adequate medical facilities are available, burial expenses, and compensation or death benefits imposed upon the insured under the provisions of this chapter.

(2) The policy is made subject to the provisions of this chapter and its provisions relative to the liability of the insured employer to pay physician's fees, nurse's charges, hospital services, hospital supplies, medicines, prosthetic devices, transportation charges to the nearest point where adequate medical facilities are available, burial expenses, compensation or death benefits to and for said employees or beneficiaries, the acceptance of the liability by the insured employer, the adjustment, trial, and adjudication of claims for the physician's fees, nurse's charges, hospital services, hospital supplies, medicines, prosthetic devices, transportation charges to the nearest point where adequate medical facilities are available, burial expenses, compensation or death benefits, and the liability of the insurer to pay the same are considered a part of this policy contract.

(3) As between the insurer and the employee or the employee's beneficiaries, notice to or knowledge of the occurrence of the injury on the part of the insured employer is notice or knowledge on the part of the insurer; jurisdiction of the insured employer for the purpose of this chapter is jurisdiction of the insurer; and the insurer, in all things, is bound by and subject to the orders, awards, judgments, and decrees made against the insured employer under this chapter.

(4) The insurer will promptly pay to the person entitled to them the benefits conferred by this chapter, including physician's fees, nurse's charges, hospital services, hospital supplies, medicines, prosthetic devices, transportation charges to the nearest point where adequate medical facilities are available, burial expenses, and all installments of compensation or death benefits awarded or agreed upon under this chapter. The obligation of the insurer is not affected by a default of the insured employer after the injury, or by default in giving a notice required by this policy. The policy is a direct promise by the insurer to the person entitled to physician's fees, nurse's charges, fees for hospital services, charges for medicines, prosthetic devices, transportation charges to the nearest point where adequate medical facilities are available, and hospital supplies, charges for burial, compensation or death benefits, and is enforceable in the name of that person. The insurer shall provide claims facilities through its own staffed adjusting facilities located within the state, or by independent, licensed, resident adjusters with power to effect settlement within the state.

(5) A termination of the policy by cancellation is not effective as to the employees of the insured employer covered by it until 20 days after written notice of the termination has been received by the division. If the employer has a contract with the state or a home rule or other political subdivision of the state, and the employer's policy is cancelled due to nonpayment of a

premium, the termination of the policy is not effective as to the employees of the insured employer covered by it until 20 days after written notice of the termination has been received by the contracting agency, and the agency has the option of continuing the payments on behalf of the employer in order to keep the policy in force. If, however, the employer has secured insurance with another insurance carrier, cancellation is effective as of the date of the new coverage.

(6) All claims for compensation, death benefits, physician's fees, nurse's charges, hospital services, hospital supplies, medicines, prosthetic devices, transportation charges to the nearest point where adequate medical facilities are available, and burial expenses, may be made directly against either the employer or the insurer, or both, and the order or award of the board may be made against either the employer or the insurer or both.

(7) If the insurer fails or refuses to pay a final award or judgment (except during the pendency of an appeal) made against it, or its insured, or if it fails or refuses to comply with a provision of this chapter, the director of the division of insurance shall revoke the approval of the policy form, and may not accept further proofs of insurance from it until it has paid the award or judgment or has complied with the violated provision of this chapter, and has resubmitted its policy form and received the approval of the form by the director of the division of insurance.

(8) An annual insurance premium that exceeds \$2,000 may be paid on an installment basis of not fewer than two payments, if requested by the insured. Premiums paid by installment must be structured to reflect seasonal peaks in the basis of the premium. The insurer shall include this provision in the insurance policy in a manner that clearly informs the insured of the provision.

AS 23.30.035. Adjustment of Insurance Rates.

If the provisions of this chapter require insurance rates adjustments, they must be made in strict compliance with the rate regulation provisions of state law.

AS 23.30.040. Second Injury Fund.

(a) There is created a second injury fund, administered by the commissioner. Money in the second injury fund may only be paid for the benefit of those persons entitled to payment of benefits from the second injury fund under this chapter. Payments from the second injury fund must be made by the commissioner in accordance with the orders and awards of the board.

(b) If an employee suffers a compensable injury that results in temporary total disability, temporary partial disability, permanent partial disability, or permanent total disability, the employer or insurance carrier shall contribute to the second injury fund. The contribution shall

be made annually at the time of the report filing required by AS 23.30.155 (m). The amount of the contribution is the product of the compensation to which the employee is entitled for temporary total disability, temporary partial disability, permanent partial disability, or permanent total disability and the applicable contribution rate set out in column A of this subsection. Payment need not be made to the second injury fund if the total contribution under this subsection is less than \$20. By December 15 of each year the commissioner shall determine and make available to the public the applicable contribution rate for the following calendar year according to the reserve rate of the second injury fund in column B of this subsection:

Column A Second Injury Fund Contribution Rate (Percent)	Column B Reserve Rate	
	At Least (Percent)	But Less Than (Percent)
6	0	50
5	50	75
4	75	100
3	100	125
2	125	150
1	150	175
0	175	

(c) If an employee suffers a compensable injury that results in death and the employee is not survived by a widow, widower, child, or dependent relative eligible to receive death benefits under AS 23.30.215, the employer or insurance carrier shall pay \$10,000 to the second injury fund.

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

(e) [Repealed, Sec. 27 ch 93 SLA 1982].

(f) All amounts collected as civil penalties under AS 23.30.155 (c) shall be paid into the second injury fund.

(g) The attorney general may investigate claims and hire expert witnesses necessary to prevent fraudulent or excessive claims for money in the second injury fund.

(h) Administration expenses of the state under this section and AS 23.30.205 must be paid from the second injury fund.

(i) The amount of a payment to the second injury fund and the conditions under which a payment is required of an employer or insurance carrier must be in accordance with the version of (b) of this section in effect on the date that the injury to the employee occurred.

AS 23.30.041. Rehabilitation of Injured Workers.

- (a)** The director shall select and employ a reemployment benefits administrator. The director may authorize the administrator to select and employ additional staff. The administrator is in the partially exempt service under AS 39.25.120 .
- (b)** The administrator shall
- (1)** enforce regulations adopted by the board to implement this section;
 - (2)** recommend regulations for adoption by the board that establish performance and reporting criteria for rehabilitation specialists;
 - (3)** enforce the quality and effectiveness of reemployment benefits provided for under this section;
 - (4)** review on an annual basis the performance of rehabilitation specialists to determine continued eligibility for delivery of rehabilitation services;
 - (5)** submit to the department, on or before May 1 of each year, a report of reemployment benefits provided under this section for the previous calendar year; the report must include a general section, sections related to each rehabilitation specialist employed under this section, and a statistical summary of all rehabilitation cases, including
 - (A)** the estimated and actual cost of each active rehabilitation plan;
 - (B)** the estimated and actual time of each rehabilitation plan;
 - (C)** a status report on all individuals requesting, waiving, beginning, completing, or terminating a reemployment benefits program including
 - (i)** reasons for denial, waiver, suspension, or termination;
 - (ii)** dates of completion and return to work; and
 - (iii)** other information required by the director;
 - (D)** the cost of reemployment benefits;
 - (E)** status reports of all individuals who successfully completed a reemployment plan that includes
 - (i)** the plan's occupational goal and whether the individual obtained work after completion in the planned or another occupation; and
 - (ii)** the individual's employment status six months, one year, and two years after reemployment plan completion;
 - (6)** maintain a list of rehabilitation specialists who meet the qualifications established under this section;
 - (7)** promote awareness among physicians, adjusters, injured workers, employers, employees, attorneys, training providers, and rehabilitation specialists of the reemployment program established in this subsection.
- (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 is totally unable, for 45 consecutive days, to return to the employee's employment at the time of injury, the administrator shall notify the employee of the employee's rights under this section within 14 days after the 45th 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 employee's occupation at the time of the injury. If the employee is totally unable to return to the employee's employment at the time of the injury for 90 consecutive days as a

result of the injury, the administrator shall, without a request, order an eligibility evaluation unless a stipulation of eligibility was submitted. If the administrator approves a request or orders an evaluation, the administrator shall, on a rotating and geographic basis, select a rehabilitation specialist from the list maintained under (b)(6) of this section to perform the eligibility evaluation. If the person that employs a rehabilitation specialist selected by the administrator to perform an eligibility evaluation under this subsection is performing any other work on the same workers' compensation claim involving the injured employee, the administrator shall select a different rehabilitation specialist.

(d) Within 30 days after the referral by the administrator, the rehabilitation specialist shall perform the eligibility evaluation and issue a report of findings. The administrator may grant up to an additional 30 days for performance of the eligibility evaluation upon notification of unusual and extenuating circumstances and the rehabilitation specialist's request. Within 14 days after receipt of the report from the rehabilitation specialist, the administrator shall notify the parties of the employee's eligibility for reemployment preparation benefits. Within 10 days after the decision, either party may seek review of the decision by requesting a hearing under AS 03.30.110. The hearing shall be held within 30 days after it is requested. The board shall uphold the decision of the administrator except for abuse of discretion on the administrator's part.

(e) An employee shall be eligible for benefits under this section upon the employee's written request and by having a physician predict that the employee will have permanent physical capacities that are less than the physical demands of the employee's job as described in the 1993 edition of the United States Department of Labor's "Selected Characteristics of Occupations Defined in the Revised Dictionary of Occupational Titles" for

(1) the employee's job at the time of injury; or

(2) other jobs that exist in the labor market that the employee has held or received training for within 10 years before the injury or that the employee has held following the injury for a period long enough to obtain the skills to compete in the labor market, according to specific vocational preparation codes as described in the 1993 edition of the United States Department of Labor's "Selected Characteristics of Occupations Defined in the Revised Dictionary of Occupational Titles."

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

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

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

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

(4) at the time of medical stability, no permanent impairment is identified or expected.

(g) Within 30 days after the employee receives the administrator's notification of eligibility for benefits, an employee shall file a statement under oath with the board, on a form prescribed or approved by the board, to notify the administrator and the employer of the employee's election to either use the reemployment benefits or to accept a job dislocation benefit under (2) of this subsection. The notice of the election is effective upon service to the administrator and the employer. The following apply to an election under this subsection:

(1) an employee who elects to use the reemployment benefits also shall notify the employer of the employee's selection of a rehabilitation specialist who shall provide a complete reemployment benefits plan; failure to give notice of selection of a rehabilitation specialist required by this paragraph constitutes noncooperation under (n) of this section; if the employer disagrees with the employee's choice of rehabilitation specialist to develop the plan and the disagreement cannot be resolved, then the administrator shall assign a rehabilitation specialist; the employer and employee each have one right of refusal of a rehabilitation specialist;

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

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

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

(C) \$13,500 if the employee's permanent partial impairment rating is 30 percent or greater;

(3) the form provided by the division for election must specify that the employee understands the scope of the benefits and rights being waived by the election; the board shall serve a copy of the executed election form on the administrator and the employer within 10 days after receiving the form from the employee; a waiver and election effective under this subsection discharges the employer's liability for the benefits or rights under this section that were not elected; a waiver may not be modified under AS 23.30.130 ; the administrator may not accept an election to accept a job dislocation benefit by an employee who has not signed a form that conspicuously notes the benefit being waived.

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

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

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

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

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

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

(6) the date that the plan will commence;

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

(8) a detailed description and plan schedule;

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

(10) a provision requiring that, after a person has been assigned to perform medical management services for an injured employee, the person shall send written notice to the employee, the employer, and the employee's physician explaining in what capacity the person is employed, whom the person represents, and the scope of the services to be provided.

(i) Reemployment benefits shall be selected from the following in a manner that ensures remunerative employability in the shortest possible time:

(1) on the job training;

(2) vocational training;

(3) academic training;

(4) self-employment; or

(5) a combination of (1) - (4) of this subsection.

(j) The employee, rehabilitation specialist, and the employer shall sign the reemployment benefits plan. If the employer and employee fail to agree on a reemployment plan, either party may submit a reemployment plan for approval to the administrator; the administrator shall approve or deny a plan within 14 days after the plan is submitted; within 10 days of the decision, either party may seek review of the decision by requesting a hearing under AS 23.30.110; the board shall uphold the decision of the administrator unless evidence is submitted supporting an allegation of abuse of discretion on the part of the administrator; the board shall render a decision within 30 days after completion of the hearing.

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

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

(l) The cost of the reemployment plan incurred under this section shall be the responsibility of the employer, shall be paid on an expense incurred basis, and may not exceed \$13,300.

(m) Only a rehabilitation specialist may accept case assignments as a case manager and sign eligibility determinations and reemployment plans. A person who is not a rehabilitation specialist may perform rehabilitation casework if the work is performed under the direct supervision of a rehabilitation specialist employed in the same firm and location.

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

(1) unreasonable failure to

(A) keep appointments;

(B) maintain passing grades;

(C) attend designated programs;

(D) maintain contact with the rehabilitation specialist;

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

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

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

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

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

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

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

(r) In this section

(1) "administrator" means the reemployment benefits administrator under (a) of this section;

(2) "employability" means possessing the ability but not necessarily the opportunity to engage in employment that is consistent with the employee's physical status imposed by the compensable injury;

(3) "labor market" means a geographical area that offers employment opportunities in the following priority:

(A) area of residence;

(B) area of last employment;

(C) the state;

(D) other states;

(4) "physical capacities" means objective and measurable physical traits such as ability to lift and carry, walk, stand or sit, push, pull, climb, balance, stoop, kneel, crouch, crawl, reach, handle, finger, feel, talk, hear, or see;

(5) "physical demands" means the physical requirements of the job such as strength, including positions such as standing, walking, sitting, and movement of objects such as lifting, carrying, pushing, pulling, climbing, balancing, stooping, kneeling, crouching, crawling, reaching, handling, fingering, feeling, talking, hearing, or seeing;

(6) "rehabilitation specialist" means a person who is a certified insurance rehabilitation specialist, a certified rehabilitation counselor, or a person who has equivalent or better qualifications as determined under regulations adopted by the department;

(7) "remunerative employability" means having the skills that allow a worker to be compensated with wages or other earnings equivalent to at least 60 percent of the worker's gross hourly wages at the time of injury; if the employment is outside the state, the stated 60 percent shall be adjusted to account for the difference between the applicable state average weekly wage and the Alaska average weekly wage.

Article 02. DUTIES OF EMPLOYER

AS 23.30.045. Employer's Liability For Compensation.

(a) An employer is liable for and shall secure the payment to employees of the compensation payable under AS 23.30.041 , 23.30.050, 23.30.095, 23.30.145, and 23.30.180 - 23.30.215. If the employer is a subcontractor and fails to secure the payment of compensation to its employees, the contractor is liable for and shall secure the payment of the compensation to employees of the subcontractor. If the employer is a contractor and fails to secure the payment of compensation to its employees or the employees of a subcontractor, the project owner is liable for and shall secure the payment of the compensation to employees of the contractor and employees of a subcontractor, as applicable.

(b) Compensation is payable irrespective of fault as a cause for the injury.

(c) For a person eligible for vocational rehabilitation service under this chapter or AS 23.15.080 who is placed with an employer for service at the request of the rehabilitation administrator or division of vocational rehabilitation to provide on the job training, work readiness, work therapy experience, or work sampling, the liability set out in (a) of this section applies to the state rather than to the employer. However, an employer may elect to assume the liabilities in (a) of this section.

(d) A contract may not be awarded by the state or a home rule or other political subdivision of the state unless the person to whom the contract is to be awarded has submitted to the contracting agency proof, furnished by the insurance carrier, of current coverage by workers' compensation insurance from an insurance company or association authorized to transact the business of workers' compensation insurance in this state or proof, furnished by the board, of a current certificate of self-insurance from the board. The person to whom the contract is awarded shall keep the workers' compensation insurance policy in effect during the life of the contract with the state or political subdivision. If the state or the political subdivision of the state fails to obtain proof of coverage or self-insurance or to protect itself under (e) of this section, and an employee of the contractor is injured during the term of the contract, the state or the political subdivision is liable for workers' compensation to the employee if the employee is unable to recover from the employer because of the employer's lack of financial assets. The state or the political subdivision is not liable, however, to the employee for workers' compensation if the employee can recover from the employer under (a) and (b) of this section.

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

(f) In this section,

- (1) "contractor" means a person who undertakes by contract performance of certain work for another but does not include a vendor whose primary business is the sale or leasing of tools, equipment, other goods, or property;
- (2) "project owner" means a person who, in the course of the person's business, engages the services of a contractor and who enjoys the beneficial use of the work;
- (3) "subcontractor" means a person to whom a contractor sublets all or part of the initial undertaking.

AS 23.30.050. Employer's Liability Despite Negligence of a Third Party.

The liability of an employer for medical treatment is not affected by the fact that the employee was injured through the fault or negligence of a third party not in the same employ, until notice of election to sue has been given as required by AS 23.30.015 (a) or suit has been brought against the third party without giving notice. The employer has, however, a cause of action against the third party to recover any amounts paid by the employer for the medical treatment in like manner as provided in AS 23.30.015 (b).

AS 23.30.055. Exclusiveness of Liability.

The liability of an employer prescribed in AS 23.30.045 is exclusive and in place of all other liability of the employer and any fellow employee to the employee, the employee's legal representative, husband or wife, parents, dependents, next of kin, and anyone otherwise entitled to recover damages from the employer or fellow employee at law or in admiralty on account of the injury or death. The liability of the employer is exclusive even if the employee's claim is barred under AS 23.30.022. However, if an employer fails to secure payment of compensation as required by this chapter, an injured employee or the employee's legal representative in case death results from the injury may elect to claim compensation under this chapter, or to maintain an action against the employer at law or in admiralty for damages on account of the injury or death. In that action, the defendant may not plead as a defense that the injury was caused by the negligence of a fellow servant, or that the employee assumed the risk of the employment, or that the injury was due to the contributory negligence of the employee. In this section, "employer" includes, in addition to the meaning given in AS 23.30.395 , a person who, under AS 23.30.045 (a), is liable for or potentially liable for securing payment of compensation.

AS 23.30.060. Election of Direct Payment Presumed.

(a) An employer is conclusively presumed to have elected to pay compensation directly to employees for injuries sustained arising out of and in the course of the employment according to the provisions of this chapter, until notice in writing of insurance, stating the name and address of the insurance company and the period of insurance, is given to the employee.

(b) The notice shall be posted and kept on the premises of the employer or on the premises where the employer's operations are being carried on in three conspicuous places, at the office of the employer, at the mess house or boarding house if there is one, and in some conspicuous place on the premises or works. The notice must be substantially in the following form, and the signature shall be witnessed by two witnesses: Employer's Notice of Insurance To the employees of the undersigned:

You and each of you are hereby notified that the undersigned is insured in the Insurance Company, whose address is and that the period covered by the insurance in accordance with the terms, conditions and provisions to pay compensation to employees of the undersigned for injuries received as provided in the Act of the State of Alaska, known as the

'Alaska Workers' Compensation Act.'
Signed

Witness:
.....
.....
.....

AS 23.30.065. Employer's Record of Injuries.

An employer shall keep a record with respect to an injury to an employee. The record must contain the information of disease, other disability, or death with respect to an injury that the

division requires, and must be available to inspection by the division or by a state authority at the times and under the conditions that the department prescribes by regulation.

AS 23.30.070. Report of Injury to Division.

(a) Within 10 days from the date the employer has knowledge of an injury or death or from the date the employer has knowledge of a disease or infection, alleged by the employee or on behalf of the employee to have arisen out of and in the course of the employment, the employer shall send to the division a report setting out

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

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

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

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

(5) the other information that the division may require.

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

(c) A report made under (a) or (b) of this section is not evidence of a fact stated in the report in a proceeding in respect to the injury or death on account of which the report is made.

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

(e) If the employer or the carrier has been given notice, or the employer, or an agent of the employer in charge of the business in the place where the injury occurred, or the carrier has knowledge of an injury or death of an employee and fails, neglects, or refuses to file a report of it as required by (a) of this section, the limitations in AS 23.30.105 (a) of this chapter do not begin to run against the claim of the injured employee or the employee's dependents entitled to compensation, or in favor of either the employer or the carrier, until the report has been furnished as required (a) of this section.

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

AS 23.30.075. Employer's Liability to Pay.

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

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

AS 23.30.080. Employer's Failure to Insure.

(a) If an employer fails to comply with AS 23.30.075 the employer may not escape liability for personal injury or death sustained by an employee when the injury sustained arises out of and in the usual course of the employment because

(1) the employee assumed the risks inherent to or incidental to or arising out of the employment, or the risks arising from the failure of the employer to provide and maintain a reasonably safe place to work, or the risks arising from the failure of an employer to furnish reasonably safe tools or appliances; or because the employer exercises reasonable care in selecting reasonably competent employees in the business;

(2) the injury was caused by the negligence of a co-employee;

(3) the employee was negligent, unless it appears that the negligence was wilful and with intent to cause the injury or was the result of wilful intoxication on the part of the injured party.

(b) In an action by an employee against an employer for personal injury sustained arising out of and in the course of the employment where the employer has failed to insure or to provide security as required by AS 23.30.075 , it is presumed that the injury to the employee was the first result growing out of the negligence of the employer and that the employer's negligence was the proximate cause of the injury; the burden of proof rests upon the employer to rebut this presumption of negligence.

(c) The limits of liability do not apply when an action is brought under this section.

(d) If an employer fails to insure or provide security as required by AS 23.30.075 , the board may issue a stop order at the request of the division prohibiting the use of employee labor by the employer until the employer insures or provides security as required by AS 23.30.075 . The failure of an employer to file evidence of compliance as required by AS 23.30.085 creates a

rebuttable presumption that the employer has failed to insure or provide security as required by AS 23.30.075 . If an employer fails to comply with a stop order issued under this section, the board shall assess a civil penalty of \$1,000 a day. The employer may not obtain a public contract with the state or a political subdivision of the state for three years following the violation of the stop order.

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

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

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

AS 23.30.082. Workers' Compensation Benefits Guaranty Fund.

(a) The workers' compensation benefits guaranty fund is established in the general fund to carry out the purposes of this section. The fund is composed of civil penalty payments made by employers under AS 23.30.080 , income earned on investment of the money in the fund, money deposited in the fund by the department, and appropriations to the fund, if any. However, money appropriated to the fund does not lapse. Amounts in the fund may be appropriated for

claims against the fund, for expenses directly related to fund operations and claims, and for legal expenses.

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

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

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

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

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

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

AS 23.30.085. Duty of Employer to File Evidence of Compliance.

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

(b) If an employer fails, refuses, or neglects to comply with the provision of this section, the employer shall be subject to the penalties provided in AS 23.30.070 for failure to report accidents; but nothing in this section may be construed to affect the rights conferred upon an injured employee or the employee's beneficiaries under this chapter.

AS 23.30.090. Self-Insurance Certificates.

If an employer has complied with the provisions of this chapter relating to self-insurance and has paid annual service fees assessed under AS 23.05.067 , the board shall issue the employer a certificate that shall remain in force for a period fixed by the board. The board may, upon at least 10 days' notice and a hearing, revoke a self-insurance certificate upon satisfactory proof that an employer is no longer entitled to it. After revocation, the board may grant a new certificate to an employer, upon the employer's petition and satisfactory proof of the employer's financial ability as provided in this chapter. An employer authorized as a self-insurer shall provide claims facilities through its own staffed adjusting facilities located within the state, or independent, licensed, resident adjusters with power to effect settlement within the state.

AS 23.30.092. Volunteer Ambulance Attendants', Police Officers', and Fire Fighters' Insurance.

A political subdivision may elect to provide benefits and compensation to its volunteer ambulance attendants, police officers, or fire fighters by obtaining insurance that would provide its volunteer ambulance attendants, police officers, or fire fighters with benefits and compensation at least equivalent to those conferred upon volunteer ambulance attendants, police officers, or fire fighters by this chapter, and the election shall be considered compliance with the coverage and insurance provisions of this chapter. The election shall be made by filing copies of the insurance policy or policies with the commissioner.

AS 23.30.095. Medical Treatments, Services, and Examinations.

(a) The employer shall furnish medical, surgical, and other attendance or treatment, nurse and hospital service, medicine, crutches, and apparatus for the period which the nature of the injury or the process of recovery requires, not exceeding two years from and after the date of injury to the employee. However, if the condition requiring the treatment, apparatus, or medicine is a latent one, the two-year period runs from the time the employee has knowledge of the nature of the employee's disability and its relationship to the employment and after disablement. It shall be additionally provided that, if continued treatment or care or both beyond the two-year period is indicated, the injured employee has the right of review by the board. The board may authorize continued treatment or care or both as the process of recovery may require. When medical care is required, the injured employee may designate a licensed physician to provide all medical and related benefits. The employee may not make more than one change in the employee's choice of attending physician without the written consent of the employer. Referral to a specialist by the employee's attending physician is not considered a change in physicians. Upon procuring the services of a physician, the injured employee shall give proper notification

of the selection to the employer within a reasonable time after first being treated. Notice of a change in the attending physician shall be given before the change.

(b) If the employee is unable to designate a physician and the emergency nature of the injury requires immediate medical care, or if the employee does not desire to designate a physician and so advises the employer, the employer shall designate the physician. Designation under this subsection, however, does not prevent the employee from subsequently designating a physician for continuance of required medical care.

(c) A claim for medical or surgical treatment, or treatment requiring continuing and multiple treatments of a similar nature is not valid and enforceable against the employer unless, within 14 days following treatment, the physician or health care provider giving the treatment or the employee receiving it furnishes to the employer and the board notice of the injury and treatment, preferably on a form prescribed by the board. The board shall, however, excuse the failure to furnish notice within 14 days when it finds it to be in the interest of justice to do so, and it may, upon application by a party in interest, make an award for the reasonable value of the medical or surgical treatment so obtained by the employee. When a claim is made for a course of treatment requiring continuing and multiple treatments of a similar nature, in addition to the notice, the physician or health care provider shall furnish a written treatment plan if the course of treatment will require more frequent outpatient visits than the standard treatment frequency for the nature and degree of the injury and the type of treatments. The treatment plan shall be furnished to the employee and the employer within 14 days after treatment begins. The treatment plan must include objectives, modalities, frequency of treatments, and reasons for the frequency of treatments. If the treatment plan is not furnished as required under this subsection, neither the employer nor the employee may be required to pay for treatments that exceed the frequency standard. The board shall adopt regulations establishing standards for frequency of treatment.

(d) If at any time during the period the employee unreasonably refuses to submit to medical or surgical treatment, the board may by order suspend the payment of further compensation while the refusal continues, and no compensation may be paid at any time during the period of suspension, unless the circumstances justified the refusal.

(e) The employee shall, after an injury, at reasonable times during the continuance of the disability, if requested by the employer or when ordered by the board, submit to an examination by a physician or surgeon of the employer's choice authorized to practice medicine under the laws of the jurisdiction in which the examination occurs, furnished and paid for by the employer. The employer may not make more than one change in the employer's choice of a physician or surgeon without the written consent of the employee. Referral to a specialist by the employer's physician is not considered a change in physicians. An examination requested by the employer not less than 14 days after injury, and every 60 days thereafter, shall be presumed to be reasonable, and the employee shall submit to the examination without further request or order by the board. Unless medically appropriate, the physician shall use existing diagnostic data to complete the examination. Facts relative to the injury or claim communicated to or otherwise learned by a physician or surgeon who may have attended or examined the employee, or who may have been present at an examination are not privileged, either in the hearings provided for in this chapter or an action to recover damages against an employer who is subject to the compensation provisions of this chapter. If an employee refuses

to submit to an examination provided for in this section, the employee's rights to compensation shall be suspended until the obstruction or refusal ceases, and the employee's compensation during the period of suspension may, in the discretion of the board or the court determining an action brought for the recovery of damages under this chapter, be forfeited. The board in any case of death may require an autopsy at the expense of the party requesting the autopsy. An autopsy may not be held without notice first being given to the widow or widower or next of kin if they reside in the state or their whereabouts can be reasonably ascertained, of the time and place of the autopsy and reasonable time and opportunity given the widow or widower or next of kin to have a representative present to witness the autopsy. If adequate notice is not given, the findings from the autopsy may be suppressed on motion made to the board or to the superior court, as the case may be.

(f) [Repealed, Sec. 74 Ch 10 FSSLA 2005].

(g) [Repealed, Sec. 27 Ch 93 SLA 1982].

(h) Upon the filing with the division by a party in interest of a claim or other pleading, all parties to the proceeding must immediately, or in any event within five days after service of the pleading, send to the division the original signed reports of all physicians relating to the proceedings that they may have in their possession or under their control, and copies of the reports shall be served by the party immediately on any adverse party. There is a continuing duty on all parties to file and serve all the reports during the pendency of the proceeding.

(i) Interference by a person with the selection by an injured employee of an authorized physician to treat the employee, or the improper influencing or attempt by a person to influence a medical opinion of a physician who has treated or examined an injured employee is a misdemeanor.

(j) The commissioner shall appoint a medical services review committee to assist and advise the department and the board in matters involving the appropriateness, necessity, and cost of medical and related services provided under this chapter. The medical services review committee shall consist of nine members to be appointed by the commissioner as follows:

(1) one member who is a member of the Alaska State Medical Association;

(2) one member who is a member of the Alaska Chiropractic Society;

(3) one member who is a member of the Alaska State Hospital and Nursing Home Association;

(4) one member who is a health care provider, as defined in AS 09.55.560;

(5) four public members who are not within the definition of "health care provider" in AS 09.55.560 ; and

(6) one member who is the designee of the commissioner and who shall serve as chair.

(k) In the event of a medical dispute regarding determinations of causation, medical stability, ability to enter a reemployment plan, degree of impairment, functional capacity, the amount and efficacy of the continuance of or necessity of treatment, or compensability between the employee's attending physician and the employer's independent medical evaluation, the board may require that a second independent medical evaluation be conducted by a physician or physicians selected by the board from a list established and maintained by the board. The cost of an examination and medical report shall be paid by the employer. The report of an independent medical examiner shall be furnished to the board and to the parties within 14 days after the examination is concluded. A person may not seek damages from an independent

medical examiner caused by the rendering of an opinion or providing testimony under this subsection, except in the event of fraud or gross incompetence.

(l) [Repealed, Sec. 74 Ch 10 FSSLA 2005].

(m) [Repealed, Sec. 74 Ch 10 FSSLA 2005].

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

(o) Notwithstanding (a) of this section, an employer is not liable for palliative care after the date of medical stability unless the palliative care is reasonable and necessary (1) to enable the employee to continue in the employee's employment at the time of treatment, (2) to enable the employee to continue to participate in an approved reemployment plan, or (3) to relieve chronic debilitating pain. A claim for palliative care is not valid and enforceable unless it is accompanied by a certification of the attending physician that the palliative care meets the requirements of this subsection. A claim for palliative care is subject to the requirements of (c) - (n) of this section. If a claim for palliative care is controverted by the employer, the board may require an evaluation under (k) of this section regarding the disputed palliative care. A claim for palliative care may be heard by the board under AS 23.30.110 .

AS 23.30.097. Fees for Medical Treatment and Services.

(a) All fees and other charges for medical treatment or service are subject to regulation by the board consistent with this section. A fee or other charge for medical treatment or service may not exceed the lowest of

(1) the usual, customary, and reasonable fees for the treatment or service in the community in which it is rendered, for treatment or service

(A) provided before August 1, 2007, not to exceed the fees in the fee schedule specified by the board in its published bulletin dated December 1, 2004;

(B) provided on or after August 1, 2007, but before March 31, 2009, not to exceed the fees otherwise applicable in (A) of this paragraph adjusted by the percentage change from 2004 to 2006 in the medical care component of the Consumer Price Index for all urban consumers compiled by the United States Department of Labor, Bureau of Labor Statistics;

(2) the fee or charge for the treatment or service when provided to the general public; or

(3) the fee or charge for the treatment or service negotiated by the provider and the employer under (c) of this section.

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

- (1)** the employee's right to chose the employee's attending physician under AS 23.30.095 (a) is not impaired;
- (2)** when given to the employee, the employer's preferred physician list must clearly state that the list is voluntary, that the employee's choice is not restricted to the list, that the employee's rights under this chapter are not impaired by choosing an attending physician from the list, and that, if the employee chooses an attending physician from the list, the employee may, in the manner provided in AS 23.30.095 , make one change of attending physician, from the list or otherwise; and
- (3)** establishment of a list of preferred physicians does not affect the employer's choice of physician for an employer medical examination under AS 23.30.095 .
- (c)** An employer or group of employers may negotiate with physicians and other treatment service providers under this chapter to obtain reduced fees and service charges and may take the fees and charges into account when forming a list of preferred physicians and providers. In no event may an employer or group of employers attempt to influence the treatment, medical decisions, or ratings by the physicians in the course of the negotiations of such a preferred physician and provider fee plans.
- (d)** An employer shall pay an employee's bills for medical treatment under this chapter, excluding prescription charges or transportation for medical treatment, within 30 days after the date that the employer receives the provider's bill or a completed report as required by AS23.30.095 (c), whichever is later.
- (e)** A physician or other provider of treatment services under this chapter, including hospital services, that submits a bill for medical treatment to the insurer or self-insured employer shall also submit a copy of the bill to the employee to whom the treatment was provided. An employee who notifies the insurer or self-insured employer's adjuster in writing of an overcharge in the bill that was not previously identified by the insurer or self-insured employer's adjuster shall be entitled to a reward equal to 25 percent of the billing reduction or reimbursement achieved due to the employee's report. This reward does not apply to overcharges of an amount under \$100 if the insurer or self-insured employer's adjuster elects not to pursue correction of the bill.
- (f)** An employee may not be required to pay a fee or charge for medical treatment or service provided under this chapter.
- (g)** Unless the employer controverts a charge, the employer shall reimburse an employee's prescription charges under this chapter within 30 days after the employer receives the health care provider's completed report and an itemization of the prescription charges for the employee. Unless the employer controverts a charge, an employer shall reimburse any transportation expenses for medical treatment under this chapter within 30 days after the employer receives the health care provider's completed report and an itemization of the dates, destination, and transportation expenses for each date of travel for medical treatment. If the employer does not plan to make or does not make payment or reimbursement in full as required by this subsection, the employer shall notify the employee and the employee's health care provider in writing that payment will not be made timely and the reason for the nonpayment. The notification must be provided not later than the date that the payment is due under this subsection.

Article 03. COMPENSATION PROCEEDINGS

AS 23.30.100. Notice of Injury or Death.

(a) Notice of an injury or death in respect to which compensation is payable under this chapter shall be given within 30 days after the date of such injury or death to the board and to the employer.

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

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

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

(1) if the employer, an agent of the employer in charge of the business in the place where the injury occurred, or the carrier had knowledge of the injury or death and the board determines that the employer or carrier has not been prejudiced by failure to give notice;

(2) if the board excuses the failure on the ground that for some satisfactory reason notice could not be given;

(3) unless objection to the failure is raised before the board at the first hearing of a claim for compensation in respect to the injury or death.

AS 23.30.105. Time For Filing of Claims.

(a) The right to compensation for disability under this chapter is barred unless a claim for it is filed within two years after the employee has knowledge of the nature of the employee's disability and its relation to the employment and after disablement. However, the maximum time for filing the claim in any event other than arising out of an occupational disease shall be four years from the date of injury, and the right to compensation for death is barred unless a claim therefor is filed within one year after the death, except that if payment of compensation has been made without an award on account of the injury or death, a claim may be filed within two years after the date of the last payment of benefits under

AS [23.30.041](#) , [23.30.180](#), [23.30.185](#), [23.30.190](#), [23.30.200](#), or [23.30.215](#). It is additionally provided that, in the case of latent defects pertinent to and causing compensable disability, the injured employee has full right to claim as shall be determined by the board, time limitations notwithstanding.

(b) Failure to file a claim within the period prescribed in (a) of this section is not a bar to compensation unless objection to the failure is made at the first hearing of the claim in which all parties in interest are given reasonable notice and opportunity to be heard.

(c) If a person who is entitled to compensation under this chapter is mentally incompetent or a minor, the provisions of (a) of this section are not applicable so long as the person has no guardian or other authorized representative, but are applicable in the case of a person who is mentally incompetent or a minor from the date of appointment of a guardian or other representative, or in the case of a minor, if no guardian is appointed before the person becomes of age, from the date the person becomes of age.

(d) If recovery is denied to a person, in a suit brought at law or in admiralty to recover damages in respect to injury or death, on the ground that the person was an employee and that the defendant is an employer within the meaning of this chapter and that the employer has secured compensation to the employee under this chapter, the limitation of time prescribed in (a) of this section begins to run only from the date of termination of the suit.

AS 23.30.106. [Renumbered as AS 23.30.011

Repealed or Renumbered

AS 23.30.107. Release of Information.

(a) Upon written request, an employee shall provide written authority to the employer, carrier, rehabilitation specialist, or reemployment benefits administrator to obtain medical and rehabilitation information relative to the employee's injury. The request must include notice of the employee's right to file a petition for a protective order with the division and must be served by certified mail to the employee's address on the notice of injury or by hand delivery to the employee. This subsection may not be construed to authorize an employer, carrier, rehabilitation specialist, or reemployment benefits administrator to request medical or other information that is not applicable to the employee's injury.

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

- (1) the reemployment benefits administrator, the division, the board, or the department from releasing medical or rehabilitation records in an employee's file, without the employee's consent, to a physician providing medical services under AS 23.30.095 (k) or 23.30.110(g), a party to a claim filed by the employee, or a governmental agency; or
- (2) the quoting or discussing of medical or rehabilitation records contained in an employee's file during a hearing on a claim for compensation, or in a decision and order of the board.
- (c) The division may not assemble, or provide information respecting, individual records for commercial purposes that are outside the scope of this chapter.

AS 23.30.108. Prehearings On Discovery Matters; Objections to Requests For Release of Information; Sanctions For Noncompliance.

- (a) If an employee objects to a request for written authority under AS 23.30.107, the employee must file a petition with the board seeking a protective order within 14 days after service of the request. If the employee fails to file a petition and fails to deliver the written authority as required by AS 23.30.107 within 14 days after service of the request, the employee's rights to benefits under this chapter are suspended until the written authority is delivered.
- (b) If a petition seeking a protective order is filed, the board shall set a prehearing within 21 days after the filing date of the petition. At a prehearing conducted by the board's designee, the board's designee has the authority to resolve disputes concerning the written authority. If the board or the board's designee orders delivery of the written authority and if the employee refuses to deliver it within 10 days after being ordered to do so, the employee's rights to benefits under this chapter are suspended until the written authority is delivered. During any period of suspension under this subsection, the employee's benefits under this chapter are forfeited unless the board, or the court determining an action brought for the recovery of damages under this chapter, determines that good cause existed for the refusal to provide the written authority.
- (c) At a prehearing on discovery matters conducted by the board's designee, the board's designee shall direct parties to sign releases or produce documents, or both, if the parties present releases or documents that are likely to lead to admissible evidence relative to an employee's injury. If a party refuses to comply with an order by the board's designee or the board concerning discovery matters, the board may impose appropriate sanctions in addition to any forfeiture of benefits, including dismissing the party's claim, petition, or defense. If a discovery dispute comes before the board for review of a determination by the board's designee, the board may not consider any evidence or argument that was not presented to the board's designee, but shall determine the issue solely on the basis of the written record. The decision by the board on a discovery dispute shall be made within 30 days. The board shall uphold the designee's decision except when the board's designee's determination is an abuse of discretion.

AS 23.30.110. Procedure On Claims.

(a) Subject to the provisions of AS 23.30.105 , a claim for compensation may be filed with the board in accordance with its regulations at any time after the first seven days of disability following an injury, or at any time after death, and the board may hear and determine all questions in respect to the claim.

(b) Within 10 days after a claim is filed the board, in accordance with its regulations, shall notify the employer and any other person, other than the claimant, whom the board considers an interested party that a claim has been filed. The notice may be served personally upon the employer or other person, or sent by registered mail.

(c) Before a hearing is scheduled, the party seeking a hearing shall file a request for a hearing together with an affidavit stating that the party has completed necessary discovery, obtained necessary evidence, and is prepared for the hearing. An opposing party shall have 10 days after the hearing request is filed to file a response. If a party opposes the hearing request, the board or a board designee shall within 30 days of the filing of the opposition conduct a pre-hearing conference and set a hearing date. If opposition is not filed, a hearing shall be scheduled no later than 60 days after the receipt of the hearing request. The board shall give each party at least 10 days' notice of the hearing, either personally or by certified mail. After a hearing has been scheduled, the parties may not stipulate to change the hearing date or to cancel, postpone, or continue the hearing, except for good cause as determined by the board. After completion of the hearing the board shall close the hearing record. If a settlement agreement is reached by the parties less than 14 days before the hearing, the parties shall appear at the time of the scheduled hearing to state the terms of the settlement agreement. Within 30 days after the hearing record closes, the board shall file its decision. If the employer controverts a claim on a board-prescribed controversion notice and the employee does not request a hearing within two years following the filing of the controversion notice, the claim is denied.

(d) At the hearing the claimant and the employer may each present evidence in respect to the claim and may be represented by any person authorized in writing for that purpose.

(e) The order rejecting the claim or making the award, referred to in this chapter as a compensation order, shall be filed in the office of the board, and a copy of it shall be sent by registered mail to the claimant and to the employer at the last known address of each.

(f) An award of compensation for disability may be made after the death of an injured employee.

(g) An injured employee claiming or entitled to compensation shall submit to the physical examination by a duly qualified physician which the board may require. The place or places shall be reasonably convenient for the employee. The physician or physicians as the employee, employer, or carrier may select and pay for may participate in an examination if the employee, employer, or carrier so requests. Proceedings shall be suspended and no compensation may be payable for a period during which the employee refuses to submit to examination.

(h) The filing of a hearing request under (c) of this section suspends the running of the two-year time period specified in (c) of this section. However, if the employee subsequently requests a continuance of the hearing and the request is approved by the board, the granting of the

continuance renders the request for hearing inoperative, and the two-year time period specified in (c) of this section continues to run again from the date of the board's notice to the employee of the board's granting of the continuance and of its effect. If the employee fails to again request a hearing before the conclusion of the two-year time period in (c) of this section, the claim is denied.

AS 23.30.115. Attendance and Fees of Witnesses.

- (a) A person is not required to attend as a witness in a proceeding before the board at a place more than 100 miles from the person's place of residence, unless the person's lawful mileage and fee for one day's attendance is first paid or tendered to the person; but the testimony of a witness may be taken by deposition or interrogatories according to the Rules of Civil Procedure.
- (b) A witness summoned in a proceeding before the board or whose deposition is taken shall receive the same fees and mileage as a witness in the superior court.

AS 23.30.120. Presumptions.

- (a) In a proceeding for the enforcement of a claim for compensation under this chapter it is presumed, in the absence of substantial evidence to the contrary, that
- (1) the claim comes within the provisions of this chapter;
 - (2) sufficient notice of the claim has been given;
 - (3) the injury was not proximately caused by the intoxication of the injured employee or proximately caused by the employee being under the influence of drugs unless the drugs were taken as prescribed by the employee's physician;
 - (4) the injury was not occasioned by the wilful intention of the injured employee to injure or kill self or another.
- (b) If delay in giving notice is excused by the board under AS 23.30.100(d)(2), the burden of proof of the validity of the claim shifts to the employee notwithstanding the provisions of (a) of this section.
- (c) The presumption of compensability established in (a) of this section does not apply to a mental injury resulting from work-related stress.

AS 23.30.122. Credibility of Witnesses.

The board has the sole power to determine the credibility of a witness. A finding by the board concerning the weight to be accorded a witness's testimony, including medical testimony and reports, is conclusive even if the evidence is conflicting or susceptible to contrary conclusions. The findings of the board are subject to the same standard of review as a jury's finding in a civil action.

AS 23.30.125. Administrative Review of Compensation Order.

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

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

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

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

AS 23.30.127. Appeals to Commission.

(a) A party in interest may appeal a compensation order issued by the board to the commission within 30 days after the compensation order is filed with the office of the board under AS 23.30.110. The director may intervene in an appeal. If a party in interest is not represented by counsel and the compensation order concerns an unsettled question of law, the director may file an appeal to obtain a ruling on the question by the commission.

- (b)** An appeal is initiated by filing with the office of the commission
- (1)** a signed notice of appeal specifying the compensation order appealed from;
 - (2)** a statement of the grounds upon which the appeal is taken; and
 - (3)** other material the commission may by regulation require.
- (c)** A cross-appeal may be initiated by filing with the office of the commission a signed notice of cross-appeal within 30 days after the decision is filed or within 15 days after service of notice of an appeal, whichever is later. The notice of cross-appeal shall specify the compensation order appealed from and the grounds upon which the cross-appeal is taken.
- (d)** The office of the commission may charge a fee, not to exceed \$100, for filing appeals and cross-appeals, except that the office of the commission may not charge a fee if the appellant is the state or a political subdivision of the state. The commission may require an appellant to pay the costs of the transcript of hearing and the preparation of the record on appeal. The commission may require cross-appellants or intervenors to share in the costs.
- (e)** If a request for reconsideration of a board decision was timely filed with the office of the board, the notice of appeal must be filed within 30 days after the reconsideration decision is mailed to the parties or the date the request for reconsideration is considered denied in the absence of any action on the request, whichever is earlier.
- (f)** The commission may require written briefs and make other rules and orders to facilitate the business of the commission and advance the prompt, fair, and just disposition of appeals.

AS 23.30.128. Commission Proceedings.

- (a)** An appeal from a decision of the board under this chapter, and other proceedings under this section, shall be heard and decided by a three-member panel of the commission. An appeal panel of the commission must include the chair of the commission. The chair of the commission shall assign two members to each appeal, including one commission member classified as representing employees and one commission member classified as representing employers. Acts, decisions, and orders of the commission panel in the appeal or related proceeding shall be considered the acts, decisions, and orders of the full commission. The matter on appeal shall be decided on the record made before the board, a transcript or recording of the proceedings before the board, and oral argument and written briefs allowed by the commission. Except as provided in (c) of this section, new or additional evidence may not be received with respect to the appeal.
- (b)** The commission may review discretionary actions, findings of fact, and conclusions of law by the board in hearing, determining, or otherwise acting on a compensation claim or petition. The board's findings regarding the credibility of testimony of a witness before the board are binding on the commission. The board's findings of fact shall be upheld by the commission if supported by substantial evidence in light of the whole record. In reviewing questions of law and procedure, the commission shall exercise its independent judgment.
- (c)** The commission may hold hearings and receive evidence on applications for (1) stays under AS 23.30.125; (2) attorney fees and costs of appeal; (3) waiver of fees by indigent appellants; or

(4) dismissal of appeals for failure to prosecute or upon settlement. The commission may rely on new or additional evidence presented during the hearing in making its decision on the application.

(d) The commission may affirm, reverse, or modify a decision or order upon review and issue other orders as appropriate. The commission may remand matters it determines were improperly, incompletely, or otherwise insufficiently developed. The commission may remand for further proceedings and appropriate action with or without relinquishing the commission's jurisdiction of the appeal. The administrative adjudication procedures of

AS 44.62 (Administrative Procedure Act) do not apply to the proceedings of the commission.

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

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

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

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

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

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

AS 23.30.129. Judicial Review of Commission Orders.

(a) Notwithstanding the provisions of AS 44.62.560 , orders of the commission may not be appealed to the superior court. Consistent with AS 22.05.010 (b), final decisions of the commission may be appealed to the supreme court, and other orders may be reviewed by the supreme court as provided by the Alaska Rules of Appellate Procedure.

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

AS 23.30.130. Modification of Awards.

(a) Upon its own initiative, or upon the application of any party in interest on the ground of a change in conditions, including, for the purposes of AS 23.30.175 , a change in residence, or because of a mistake in its determination of a fact, the board may, before one year after the date of the last payment of compensation benefits under AS 23.30.180, 23.30.185, 23.30.190, 23.30.200, or 23.30.215, whether or not a compensation order has been issued, or before one year after the rejection of a claim, review a compensation case under the procedure prescribed in respect of claims in AS 23.30.110 . Under AS 23.30.110 the board may issue a new compensation order which terminates, continues, reinstates, increases, or decreases the compensation, or award compensation.

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

AS 23.30.135. Procedure Before the Board.

(a) In making an investigation or inquiry or conducting a hearing the board is not bound by common law or statutory rules of evidence or by technical or formal rules of procedure, except as provided by this chapter. The board may make its investigation or inquiry or conduct its hearing in the manner by which it may best ascertain the rights of the parties. Declarations of a deceased employee concerning the injury in respect to which the investigation or inquiry is being made or the hearing conducted shall be received in evidence and are, if corroborated by other evidence, sufficient to establish the injury.

(b) All testimony given during a hearing before the board shall be recorded, but need not be transcribed unless further review is initiated. Hearings before the board shall be open to the public.

AS 23.30.140. Appointment of Guardian By Court.

The director may require the appointment of a guardian or other representative by a competent court for any person who is mentally incompetent or a minor to receive compensation payable to the person under this chapter and to exercise the powers granted to or to perform the duties required of the person under this chapter. If the director does not require the appointment of a guardian to receive the compensation of a minor, appointment for this purpose is not necessary.

AS 23.30.145. Attorney Fees.

(a) Fees for legal services rendered in respect to a claim are not valid unless approved by the board, and the fees may not be less than 25 percent on the first \$1,000 of compensation or part of the first \$1,000 of compensation, and 10 percent of all sums in excess of \$1,000 of compensation. When the board advises that a claim has been controverted, in whole or in part, the board may direct that the fees for legal services be paid by the employer or carrier in addition to compensation awarded; the fees may be allowed only on the amount of compensation controverted and awarded. When the board advises that a claim has not been controverted, but further advises that bona fide legal services have been rendered in respect to the claim, then the board shall direct the payment of the fees out of the compensation awarded. In determining the amount of fees the board shall take into consideration the nature, length, and complexity of the services performed, transportation charges, and the benefits resulting from the services to the compensation beneficiaries.

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

(c) If proceedings are had for review of a compensation or medical and related benefits order before a court, the court may allow or increase an attorney's fees. The fees are in addition to compensation or medical and related benefits ordered and shall be paid as the court may direct.

Article 04. PAYMENT OF COMPENSATION

AS 23.30.150. Commencement of Compensation.

Compensation may not be allowed for the first three days of the disability, except the benefits provided for in AS 23.30.095 ; if, however, the injury results in disability of more than 28 days, compensation shall be allowed from the date of the disability.

AS 23.30.155. Payment of Compensation.

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

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

(b) The first installment of compensation becomes due on the 14th day after the employer has knowledge of the injury or death. On this date all compensation then due shall be paid. Subsequent compensation shall be paid in installments, every 14 days, except where the board determines that payment in installments should be made monthly or at some other period.

(c) The insurer or adjuster shall notify the division and the employee on a form prescribed by the director that the payment of compensation has begun or has been increased, decreased, suspended, terminated, resumed, or changed in type. An initial report shall be filed with the division and sent to the employee within 28 days after the date of issuing the first payment of compensation. If at any time 21 days or more pass and no compensation payment is issued, a report notifying the division and the employee of the termination or suspension of compensation shall be filed with the division and sent to the employee within 28 days after the date the last compensation payment was issued. A report shall also be filed with the division and sent to the employee within 28 days after the date of issuing a payment increasing, decreasing, resuming, or changing the type of compensation paid. If the division and the employee are not notified within the 28 days prescribed by this subsection for reporting, the insurer or adjuster shall pay a civil penalty of \$100 for the first day plus \$10 for each day after

the first day that the notice was not given. Total penalties under this subsection may not exceed \$1,000 for a failure to file a required report. Penalties assessed under this subsection are eligible for reduction under (m) of this section. A penalty assessed under this subsection after penalties have been reduced under (m) of this section shall be increased by 25 percent and shall bear interest at the rate established under AS 45.45.010 .

(d) If the employer controverts the right to compensation, the employer shall file with the division and send to the employee a notice of controversion on or before the 21st day after the employer has knowledge of the alleged injury or death. If the employer controverts the right to compensation after payments have begun, the employer shall file with the division and send to the employee a notice of controversion within seven days after an installment of compensation payable without an award is due. When payment of temporary disability benefits is controverted solely on the grounds that another employer or another insurer of the same employer may be responsible for all or a portion of the benefits, the most recent employer or insurer who is party to the claim and who may be liable shall make the payments during the pendency of the dispute. When a final determination of liability is made, any reimbursement required, including interest at the statutory rate, and all costs and attorney fees incurred by the prevailing employer, shall be made within 14 days after the determination.

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

(f) If compensation payable under the terms of an award is not paid within 14 days after it becomes due, there shall be added to that unpaid compensation an amount equal to 25 percent of the unpaid installment. The additional amount shall be paid at the same time as, but in addition to, the compensation, unless review of the compensation order making the award as provided under AS 23.30.008 and an interlocutory injunction staying payments is allowed by the court. The additional amount shall be paid directly to the recipient to whom the unpaid compensation was to be paid.

(g) [Repealed, Sec. 3 ch 59 SLA 1981].

(h) The board may upon its own initiative at any time in a case in which payments are being made with or without an award, where right to compensation is controverted, or where payments of compensation have been increased, reduced, terminated, changed, or suspended, upon receipt of notice from a person entitled to compensation, or from the employer, that the right to compensation is controverted, or that payments of compensation have been increased, reduced, terminated, changed, or suspended, make the investigations, cause the medical examinations to be made, or hold the hearings, and take the further action which it considers will properly protect the rights of all parties.

(i) When the director considers it advisable, the director may require an employer to make a deposit with the Department of Revenue to secure the prompt and convenient payment of the

compensation, and payments from the deposit upon an award shall be made upon order of the director.

(j) If an employer has made advance payments or overpayments of compensation, the employer is entitled to be reimbursed by withholding up to 20 percent out of each unpaid installment or installments of compensation due. More than 20 percent of unpaid installments of compensation due may be withheld from an employee only on approval of the board.

(k) An injured employee, or in case of death the employee's dependents or personal representative shall give receipts for payment of compensation to the employer paying the compensation and the employer shall produce the receipts for inspection by the director, whenever required.

(l) [Repealed, Sec. 1 ch 83 SLA 1975].

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

(n) If the employer is self-insured or uninsured, the requirements of (c) and (m) of this section apply to the employer.

(o) The director shall promptly notify the division of insurance if the board determines that the employer's insurer has frivolously or unfairly controverted compensation due under this chapter. After receiving notice from the director, the division of insurance shall determine if the insurer has committed an unfair claim settlement practice under AS [21.36.125](#) .

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

(q) Unless compensation due the employee under this chapter is paid by negotiable instrument that is drawn on a state or federal financial institution, the employer shall increase the weekly rate of compensation due the employee under AS [23.30.175](#) by two percent.

AS 23.30.160. Assignment and Exemption of Claims.

- (a)** An assignment, release, or commutation of compensation or benefits due or payable under this chapter, except as provided by this chapter, is not valid.
- (b)** Benefits payable under this chapter are exempt from levy to enforce the collection of a debt as provided in AS 09.38 (exemptions). This exemption may not be waived.

AS 23.30.165. Lien.

- (a)** Each employee and beneficiary entitled to compensation under the provisions of this chapter has a lien for the full amount of the compensation the person is entitled to, including costs and disbursements of suit and attorney fees allowed, upon all of the property in connection with the construction, preservation, maintenance, or operation of which the work of the employee was being performed at the time of the injury or death. For example: in the case of an employee injured or killed while engaged in mining or in work connected with mining, the lien extends to the entire mine and all property used in connection with it; and in the case of an employee injured or killed while engaged in fishing or in the packing, canning, or salting of fish, or other branch of the fish industry, the lien extends to the entire packing, fishing, salting, or canning plant or establishment and all property used in connection with it; and this is the case with other businesses, industries, works, occupations, and employments.
- (b)** The lien is prior and paramount to any other lien on the property, except a lien for wages or materials as provided by law, and is of equal rank with a lien for wages or materials.
- (c)** The lien extends to all right, title, interest, and claim of the employer in the property affected by the lien.
- (d)** A person claiming a lien under this chapter shall, within one year after the date of the injury from which the claim of compensation arises, record in the office of the recorder of the recording district in which the property affected by the lien is located a notice of lien signed and verified by the claimant or someone on behalf of the claimant, and stating in substance, the name of the person injured or killed out of which injury or death the claim of compensation arises, the name of the employer of the injured or deceased person at the time of the injury or death, a description of the property affected or covered by the lien, and the name of the owner or reputed owner of the property.
- (e)** The lien for compensation provided for in this section may be enforced by equitable proceedings as in the enforcement of other liens upon real or personal property, within 10 months after the cause of action arises. Nothing in this section prevents an attachment of property as security for the payment of compensation.

AS 23.30.170. Collection of Defaulted Payments.

(a) In case of default by the employer in the payment of compensation due under an award of compensation for a period of 30 days after the compensation is due, the person to whom the compensation is payable may, within one year after the default, apply to the board making the compensation order for a supplementary order declaring the amount of the default. After investigation, notice, and hearing, as provided in AS 23.30.110 , the board shall make a supplementary order declaring the amount of the default. The order shall be filed in the same manner as the compensation order.

(b) If the payment in default is an installment of the award, the board may, in its discretion, declare the whole of the award as the amount in default. The applicant may file a certified copy of the supplementary order with the clerk of the superior court. The supplementary order is final. The court shall, upon the filing of the copy, enter judgment for the amount declared in default by the supplementary order if it is in accordance with law. Any time after a supplementary order by the board, the attorney general, when requested to do so by the commissioner, shall take appropriate action to assure collection of the defaulted payments.

(c) Review of the judgment may be had as in a civil action for damages. Final proceedings to execute the judgment may be had by writ of execution. The court shall modify the judgment to conform to a later compensation order upon presentation of a certified copy of it to the court.

Article 05. COMPUTATION OF COMPENSATION

AS 23.30.172. Benefit Adjustments. [Repealed, Sec. 11 Ch 75 SLA 1977].

Repealed or Renumbered

AS 23.30.175. Rates of Compensation.

(a) The weekly rate of compensation for disability or death may not exceed the maximum compensation rate, may not be less than 22 percent of the maximum compensation rate, and initially may not be less than \$110. However, if the board determines that the employee's spendable weekly wages are less than \$110 a week as computed under AS 23.30.220 , or less than 22 percent of the maximum compensation rate a week in the case of an employee who has furnished documentary proof of the employee's wages, it shall issue an order adjusting the

weekly rate of compensation to a rate equal to the employee's spendable weekly wages. If the employer can verify that the employee's spendable weekly wages are less than 22 percent of the maximum compensation rate, the employer may adjust the weekly rate of compensation to a rate equal to the employee's spendable weekly wages without an order of the board. If the employee's spendable weekly wages are greater than 22 percent of the maximum compensation rate, but 80 percent of the employee's spendable weekly wages is less than 22 percent of the maximum compensation rate, the employee's weekly rate of compensation shall be 22 percent of the maximum compensation rate. Prior payments made in excess of the adjusted rate shall be deducted from the unpaid compensation in the manner the board determines. In any case, the employer shall pay timely compensation. In this subsection, "maximum compensation rate" means 120 percent of the average weekly wage, calculated under (d) of this section, applicable on the date of injury of the employee.

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

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

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

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

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

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

(c) The department shall provide by regulation for the determination and comparison of living costs for this state and the other areas in which recipients reside and for the redetermination and comparison of these costs every three years.

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

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

AS 23.30.180. Permanent Total Disability.

(a) In case of total disability adjudged to be permanent 80 percent of the injured employee's spendable weekly wages shall be paid to the employee during the continuance of the total disability. If a permanent partial disability award has been made before a permanent total disability determination, permanent total disability benefits must be reduced by the amount of the permanent partial disability award, adjusted for inflation, in a manner determined by the board. Loss of both hands, or both arms, or both feet, or both legs, or both eyes, or of any two of them, in the absence of conclusive proof to the contrary, constitutes permanent total disability. In all other cases permanent total disability is determined in accordance with the facts. In making this determination the market for the employee's services shall be

- (1) area of residence;
- (2) area of last employment;
- (3) the state of residence; and
- (4) the State of Alaska.

(b) Failure to achieve remunerative employability as defined in AS 23.30.041(r) does not, by itself, constitute permanent total disability.

AS 23.30.185. Compensation For Temporary Total Disability.

In case of disability total in character but temporary in quality, 80 percent of the injured employee's spendable weekly wages shall be paid to the employee during the continuance of the disability. Temporary total disability benefits may not be paid for any period of disability occurring after the date of medical stability.

AS 23.30.187. Effect of Unemployment Benefits.

Compensation is not payable to an employee under AS 23.30.180 or 23.30.185 for a week in which the employee receives unemployment benefits.

AS 23.30.190. Compensation For Permanent Partial Impairment; Rating Guides.

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

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

(c) The impairment rating determined under (a) of this section shall be reduced by a permanent impairment that existed before the compensable injury. If the combination of a prior impairment rating and a rating under (a) of this section would result in the employee being considered permanently totally disabled, the prior rating does not negate a finding of permanent total disability.

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

AS 23.30.191. Expenses For Rehabilitating Injured Employees. [Repealed, Sec. 27 Ch 93 SLA 1982. For Current Law Concerning Rehabilitation of Injured Workers, See AS23.30.041

Repealed or Renumbered

AS 23.30.195. Survival of the Right to Compensation.

(a) Compensation to which any claimant would be entitled under AS 23.30.190 shall, notwithstanding death arising from causes other than the injury, be payable to and for the benefit of the persons following:

- (1) if there be a widow or widower and no child of the deceased, to the widow or widower;
 - (2) if there be a widow or widower and a surviving child of the deceased, one-half to the widow or widower, the other half to the surviving child;
 - (3) if there be a surviving child of the deceased, but no widow or widower, then to the child.
- (b) An award for disability may be made after the death of the injured employee.

AS 23.30.200. Temporary Partial Disability.

(a) In case of temporary partial disability resulting in decrease of earning capacity the compensation shall be 80 percent of the difference between the injured employee's spendable weekly wages before the injury and the wage-earning capacity of the employee after the injury in the same or another employment, to be paid during the continuance of the disability, but not to be paid for more than five years. Temporary partial disability benefits may not be paid for a period of disability occurring after the date of medical stability.

(b) The wage-earning capacity of an injured employee is determined by the actual spendable weekly wage of the employee if the actual spendable weekly wage fairly and reasonably represents the wage-earning capacity of the employee. The board may, in the interest of justice, fix the wage-earning capacity that is reasonable, having due regard to the nature of the injury, the degree of physical impairment, the usual employment, and other factors or circumstances in the case that may affect the capacity of the employee to earn wages in a disabled condition, including the effect of disability as it may naturally extend into the future.

AS 23.30.205. Injury Combined With Preexisting Impairment.

(a) If an employee who has a permanent physical impairment from any cause or origin incurs a subsequent disability by injury arising out of and in the course of the employment resulting in compensation liability for disability that is substantially greater by reason of the combined effects of the preexisting impairment and subsequent injury or by reason of the aggravation of the preexisting impairment than that which would have resulted from the subsequent injury alone, the employer or the insurance carrier shall in the first instance pay all awards of compensation provided by this chapter, but the employer or the insurance carrier shall be reimbursed from the second injury fund for all compensation payments subsequent to those payable for the first 104 weeks of disability.

(b) If the subsequent injury of the employee results in the death of the employee and it is determined that the death would not have occurred except for the preexisting permanent

physical impairment, the employer or the insurance carrier shall in the first instance pay the compensation prescribed by this chapter, but the employer or the insurance carrier shall be reimbursed from the second injury fund for all compensation payable in excess of 104 weeks.

(c) In order to qualify under this section for reimbursement from the second injury fund, the employer must establish by written records that the employer had knowledge of the permanent physical impairment before the subsequent injury and that the employee was retained in employment after the employer acquired that knowledge.

(d) In this section, "permanent physical impairment" means any permanent condition, whether congenital or due to injury or disease, of such seriousness as to constitute a hindrance or obstacle to obtaining employment or to obtaining reemployment if the employee should become unemployed. A condition may not be considered a "permanent physical impairment" unless

(1) it is one of the following conditions:

(A) epilepsy,

(B) diabetes,

(C) cardiac disease,

(D) arthritis,

(E) amputated foot, leg, arm, or hand,

(F) loss of sight of one or both eyes or a partial loss of uncorrected vision of more than 75 percent bilaterally,

(G) residual disability from poliomyelitis,

(H) cerebral palsy,

(I) multiple sclerosis,

(J) Parkinson's disease,

(K) cerebral vascular accident,

(L) tuberculosis,

(M) silicosis,

(N) hemophilia,

(O) chronic osteomyelitis,

(P) osteoporosis,

(Q) ankylosis of joints,

(R) hyperinsulinism,

(S) muscular dystrophies,

(T) arteriosclerosis,

(U) thrombophlebitis,

(V) varicose veins,

(W) heavy metal poisoning,

(X) ionizing radiation injury,

(Y) compressed air sequelae,

(Z) ruptured intervertebral disk,

(AA) spondylolisthesis; or

(2) it would support a rating of disability of 200 weeks or more if evaluated according to standards applied in compensation claims.

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

(f) An employer or the employer's carrier shall notify the commissioner of labor and workforce development of any possible claim against the second injury fund as soon as practicable, but in no event later than 100 weeks after the employer or the employer's carrier have knowledge of the injury or death.

AS 23.30.210. Determination of Wage-Earning Capacity. [Repealed, Sec. 44 Ch 79 SLA 1988].

Repealed or Renumbered

AS 23.30.215. Compensation For Death.

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

(1) reasonable and necessary funeral expenses not exceeding \$5,000;

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

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

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

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

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

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

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

(4) if there is no widow or widower or child or children, then for the support of father, mother, grandchildren, brothers and sisters, if dependent upon the deceased at the time of injury, 42 percent of the spendable weekly wage of the deceased to such beneficiaries, share and share alike, not to exceed \$20,000 in the aggregate;

(5) \$5,000 to a surviving widow or widower, or equally divided among surviving children of the deceased if there is no widow or widower.

(b) In computing death benefits, the spendable weekly wage of the deceased shall be computed under AS 23.30.220 and shall be paid in accordance with AS 23.30.155 and subject to the weekly maximum limitation in the aggregate as provided in AS 23.30.175 , but the total weekly compensation may not be less than \$75 for a widow or widower nor less than \$25 weekly to a child or \$50 for children.

(c) All questions of dependency shall be determined as of the time of the injury, or death.

(d) Compensation under this chapter to aliens not residents, or about to become nonresidents, of the United States or Canada is the same in amount as provided for residents, except that dependents in a foreign country are limited to widow or widower and child or children, or if there is no widow or widower and child or children, to surviving father or mother whom the employee has supported, either wholly or in part, for a period of one year before the date of injury. The board, at its option, or upon the application of the insurance carrier, may commute all future installments of compensation to be paid to an alien dependent who is not a resident of the United States or Canada by paying or causing to be paid to the alien dependent one-half of the commuted amount of the future installments of compensation as determined by the board.

(e) Death benefits payable to a widow or widower in accordance with (a) of this section shall abate as that person ceases to be entitled and does not inure to persons subject to continued entitlement. In the event a child ceases to be entitled, that child's share shall inure to the benefit of the surviving spouse subject to adjustment as provided in (f) of this section.

(f) Except as provided in (g) of this section, the death benefit payable to a widow or widower shall terminate 12 years following death of the deceased employee.

(g) The provisions of (f) of this section do not apply to a widow or widower who at the time of death of the deceased worker is permanently and totally disabled. The death benefits payable to a widow or widower are not subject to reduction under (f) of this section after the widow or widower has attained the age of 52 years.

(h) In the event a deceased worker is survived by children of a former marriage not living with the surviving widow or widower, then those children shall receive the amount being paid under a decree of child support; the difference between this amount and the maximum benefit payable under this section shall be distributed pro rata to the remainder of those entitled.

(i) In the event the total amount of all benefits computed under (a)(2) of this section exceeds the maximum benefit provided in AS 23.30.175, the maximum benefit under AS 23.30.175 shall be prorated among entitled survivors.

AS 23.30.220. Determination of Spendable Weekly Wage.

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

- (1)** if at the time of injury the employee's earnings are calculated by the week, the weekly amount is the employee's gross weekly earnings;
- (2)** if at the time of injury the employee's earnings are calculated by the month, the employee's gross weekly earnings are the monthly earnings multiplied by 12 and divided by 52;
- (3)** if at the time of injury the employee's earnings are calculated by the year, the employee's gross weekly earnings are the yearly earnings divided by 52;
- (4)** if at the time of injury the employee's earnings are calculated by the day, by the hour, or by the output of the employee, then the employee's gross weekly earnings are 1/50 of the total wages that the employee earned from all occupations during either of the two calendar years immediately preceding the injury, whichever is most favorable to the employee;
- (5)** if at the time of injury the employee's earnings have not been fixed or cannot be ascertained, the employee's earnings for the purpose of calculating compensation are the usual wage for similar services when the services are rendered by paid employees;
- (6)** if at the time of injury the employee's earnings are calculated by the week under (1) of this subsection or by the month under (2) of this subsection and the employment is exclusively seasonal or temporary, then the gross weekly earnings are 1/50 of the total wages that the employee has earned from all occupations during the 12 calendar months immediately preceding the injury;
- (7)** when the employee is working under concurrent contracts with two or more employers, the employee's earnings from all employers is considered as if earned from the employer liable for compensation;
- (8)** if an employee when injured is a minor, an apprentice, or a trainee in a formalized training program, as determined by the board, whose wages under normal conditions would increase during the period of disability, the projected increase may be considered by the board in computing the gross weekly earnings of the employee; if the minor, apprentice, or trainee would have likely continued that training program, then the compensation shall be the average weekly wage at the time of injury rather than that based on the individual's prior earnings;
- (9)** if the employee is injured while performing duties as a volunteer ambulance attendant, volunteer police officer, or volunteer fire fighter, then, notwithstanding (1) - (6) of this subsection, the gross weekly earnings for calculating compensation shall be the minimum gross weekly earnings paid a full-time ambulance attendant, police officer, or fire fighter employed in the political subdivision where the injury occurred, or, if the political subdivision has no full-time ambulance attendants, police officers, or fire fighters, at a reasonable figure previously set by the political subdivision to make this determination, but in no case may the gross weekly earnings for calculating compensation be less than the minimum wage computed on the basis of 40 hours work per week;
- (10)** if an employee is entitled to compensation under AS 23.30.180 and the board determines that calculation of the employee's gross weekly earnings under (1) - (7) of this subsection does not fairly reflect the employee's earnings during the period of disability, the board shall determine gross weekly earnings by considering the nature of the employee's work, work history, and resulting disability, but compensation calculated under this paragraph may not exceed the employee's gross weekly earnings at the time of injury.

(b) The commissioner shall annually prepare formulas that shall be used to calculate an employee's spendable weekly wage on the basis of gross weekly earnings, number of dependents, marital status, and payroll tax deductions.

(c) In this section,

(1) "seasonal work" means employment that is not intended to continue through an entire calendar year, but recurs on an annual basis;

(2) "temporary work" means employment that is not permanent, ends upon completion of the task, job, or contract, and ends within six months from the date of injury.

AS 23.30.224. Coordination of Benefits.

(a) Notwithstanding other provisions of this chapter, an employer's liability for payment of weekly compensation under AS 23.30.180 or 23.30.185 to an employee eligible for a disability benefit under AS 14.25.130, AS 39.35.400, or 39.35.410 may not exceed the lesser of

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

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

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

(1) the difference between the disability benefit payable to the employee under AS 14.25.130, AS 39.35.400, or 39.35.410, converted to a weekly basis, and 80 percent of the employee's spendable weekly wage as calculated under AS 23.30.220; or

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

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

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

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

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

(e) Notwithstanding other provisions of this chapter, the liability of an employer for payment of compensation for an injury or illness under AS 23.30.041 (k) to an employee who is covered by

a union or group retirement system to which the employer makes contributions under a collective bargaining agreement or by membership in a welfare or pension plan or trust may not exceed the lesser of

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

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

(f) If the union or group retirement system, pension plan, or trust referred to in (e) of this section provides by its terms that its benefits are precluded or reduced if benefits are awarded under this chapter, the limitation provided in (e)(1) of this section is not applicable to the extent of the amount precluded or reduced.

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

AS 23.30.225. Social Security and Pension or Profit Sharing Plan Offsets.

(a) When periodic retirement or survivors' benefits are payable under 42 U.S.C. 401 - 433 (Title II, Social Security Act), the weekly compensation provided for in this chapter shall be reduced by an amount equal as nearly as practicable to one-half of the federal periodic benefits for a given week.

(b) When it is determined that, in accordance with 42 U.S.C. 401 - 433, periodic disability benefits are payable to an employee or the employee's dependents for an injury for which a claim has been filed under this chapter, weekly disability benefits payable under this chapter shall be offset by an amount by which the sum of (1) weekly benefits to which the employee is entitled under 42 U.S.C. 401 - 433, and (2) weekly disability benefits to which the employee would otherwise be entitled under this chapter, exceeds 80 percent of the employee's average weekly wages at the time of injury.

(c) If employer contributions to a qualified pension or profit sharing plan have been included in the determination of gross earnings and the employee is receiving pension or profit sharing payments, weekly compensation benefits payable under this chapter shall be reduced by the amount paid or payable to the injured worker under the plan for any week or weeks during which compensation benefits are also payable. The amount of the reduction may not in any week exceed the increase in weekly compensation benefits brought about by the inclusion of

employer contributions to a qualified pension or profit sharing plan in the determination of gross earnings.

Article 06. GENERAL PROVISIONS

AS 23.30.230. Persons Not Covered.

(a) The following persons are not covered by this chapter:

(1) a part-time baby-sitter;

(2) a cleaning person;

(3) harvest help and similar part-time or transient help;

(4) a person employed as a sports official on a contractual basis and who officiates only at sports events in which the players are not compensated; in this paragraph, "sports official" includes an umpire, referee, judge, scorekeeper, timekeeper, organizer, or other person who is a neutral participant in a sports event;

(5) a person employed as an entertainer on a contractual basis;

(6) a commercial fisherman, as defined in AS 16.05.940 ;

(7) an individual who drives a taxicab whose compensation and written contractual arrangement is as described in AS 23.10.055 (a)(13), unless the hours worked by the individual or the areas in which the individual may work are restricted except to comply with local ordinances;

(8) a participant in the Alaska temporary assistance program (AS 47.27) who is engaged in work activities required under AS 47.27.035 other than subsidized or unsubsidized work or on-the-job training;

(9) a person employed as a player or coach by a professional hockey team if the person is covered under a health care insurance plan provided by the professional hockey team, the coverage is applicable to both work related and nonwork related injuries, and the coverage provides medical and related benefits as required under this chapter, except that coverage may not be limited to two years from the date of injury as described under AS 23.30.095 (a); in this paragraph, "health care insurance" has the meaning given in AS 21.12.050 ; and

(10) a person working as a qualified real estate licensee who performs services under a written contract that provides that the person will not be treated as an employee for federal income tax or workers' compensation purposes; in this paragraph, "qualified real estate licensee" means a person who is required to be licensed under AS 08.88.161 and whose payment for services is directly related to sales or other output rather than the number of hours worked.

(b) The exclusion of certain persons under (a) of this section may not be construed to require inclusion of other persons as employees for purposes of compensation under this chapter.

(c) In this section,

(1) "on-the-job training" means training provided by an employer under a formal agreement with a department of the state, or an agent of a department, for which wages are paid by the

employer to a participant in the Alaska temporary assistance program (AS 47.27) while the participant receives job training;

(2) "subsidized work" means employment, by an employer, of an Alaska temporary assistance program participant in a work placement for which the participant receives wages from the employer, subsidized by, and subject to an agreement between the employer and, a department of the state or an agent of a department; "subsidized work" does not include community work service, job sampling placements, or preplacement activities such as job readiness assessments, job searches, education, or vocational training;

(3) "unsubsidized work" means employment, by an employer, secured by an Alaska temporary assistance program participant, with or without the assistance of a department of the state or an agent of a department, for which the participant receives wages from the employer; "unsubsidized work" does not include self-employment.

AS 23.30.235. Cases in Which No Compensation is Payable.

Compensation under this chapter may not be allowed for an injury

(1) proximately caused by the employee's wilful intent to injure or kill any person;

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

AS 23.30.237. High School Students in Work-Study Programs as Employees of the State.

An individual who is enrolled for credit at a public high school in a course that combines academic instruction with work experience outside the school for a public or private nonprofit employer is an employee of the state for the purposes of this chapter while the individual is performing the work experience. Weekly compensation for disability or death under this section may not be less than the initial payment of compensation under AS 23.30.175 .

AS 23.30.238. Volunteer Emergency Medical Technicians as Employees.

(a) A person who is injured during the course and within the scope of providing service as a volunteer emergency medical technician is an employee of the state for purposes of this chapter if the person

(1) is certified by the state under AS 18.08 as an emergency medical technician or is an active roster volunteer member of a state certified emergency medical service and is registered with the Department of Health and Social Services;

(2) provides emergency medical service outside an incorporated city or borough; and

(3) is not otherwise covered for that injury by an employer's workers' compensation insurance policy or self-insurance certificate.

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

AS 23.30.239. Sole Proprietors and Partners as Employees.

(a) A person who is a sole proprietor, or a member of a partnership, may elect coverage as an employee under this chapter by making written application to an insurer. The insurer may accept the application and fix an assumed monthly wage at which the person shall be carried on the payroll for purposes of this chapter.

(b) When the application is accepted, the person is subject to the provisions and entitled to the benefits of this chapter. The person shall promptly notify the insurer whenever there is a change in the status of the person as a sole proprietor or partner.

(c) Notwithstanding the provisions of AS 23.30.120 (a), a person covered under (a) of this section bears the burden of proof of the validity of the claim.

(d) A person who has elected coverage under (a) of this section may cancel the election by giving written notice to the insurer. Notwithstanding AS 23.30.030 (5), the cancellation becomes effective the day following the filing of notice with the insurer.

AS 23.30.240. Officers of Corporations, Municipal Corporations, and Nonprofit Corporations and Members of Limited Liability Companies as Employees.

(a) An executive officer elected or appointed and empowered in accordance with the charter and bylaws of a corporation, other than an official of a municipal corporation or a charitable, religious, educational, or other nonprofit corporation, is an employee of the corporation under

this chapter. However, an executive officer of a corporation may waive coverage under this chapter, subject to the approval of the director, notwithstanding AS 23.30.245(b).

Notwithstanding any other provision of this chapter, an executive officer of a municipal corporation or of a charitable, religious, educational, or other nonprofit corporation may be brought within the coverage of its insurance contract by the corporation by specifically including the officer in the contract of insurance. The election to bring an executive officer within the coverage continues in force for the period the contract of insurance is in effect. During that period an executive officer brought within the coverage of the insurance contract is an employee of the corporation under this chapter.

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

AS 23.30.241. Special Officers as Employees.

(a) A special officer appointed under AS 18.65.010 (a) is considered an employee under this chapter only when the person is actually traveling or working as a special officer. The weekly wage earned in the special officer's regular employment shall be used in computing the amount of compensation to be awarded. If a special officer has no regular employment, the minimum wage paid a full-time state trooper shall be used in computing the amount of compensation to be awarded.

(b) Annual appropriations to fund the coverage provided for in (a) of this section shall be provided for in the budget of the Department of Public Safety.

AS 23.30.242. Members of State Boards and Commissions as Employees.

(a) A member of a state board or commission is considered an employee under this chapter only while the member is actually traveling or working as a member of the board or commission. The maximum weekly wage shall be used in computing the amount of compensation to be awarded.

(b) Annual appropriations to fund the coverage provided for in (a) of this section shall be provided for in the budget of the Office of the Governor.

AS 23.30.243. Extending Coverage to Certain Fire Fighters.

(a) For the purposes of workers' compensation any injury, disability or death incurred by a fire fighter by reason of the fire fighter's participation in authorized training, proceeding to or engaging in a fire suppression or rescue operation, or the protection or preservation of life or property, anywhere in the state is considered to have arisen out of and been sustained in the course of employment, and the fire department or regularly organized volunteer fire department of the fire fighter's primary employment or registration is considered to be the employer, except when the injured, at the time of injury or death, is acting for compensation from another.

(b) Nothing in this section requires the extension of benefits to a fire fighter employed by a municipality which by law or regulation expressly prohibits the activity giving rise to the injury, disability, or death.

AS 23.30.244. Emergency and Disaster Relief Forces as State Employees.

(a) A resident of this state temporarily engaged as a civilian volunteer in an emergency or a disaster relief function in another state or country who suffers injury or death during the course and within the scope of providing emergency or disaster relief aid is considered an employee of this state for purposes of this chapter if, at the time of the injury or death, the volunteer

(1) is an active roster civilian volunteer member of a state-certified emergency force and is registered with the state division of homeland security and emergency management in the Department of Military and Veterans' Affairs;

(2) is providing services under AS 26.23.136 during an emergency or disaster; and

(3) is not otherwise covered for that injury or death by an employer's workers' compensation insurance policy or self-insurance certificate.

(b) A resident of this state temporarily engaged as a civilian volunteer in a disaster emergency relief function in this state who suffers injury or death during the course and within the scope of providing disaster emergency relief aid is considered an employee of the state for purposes of this chapter if, at the time of the injury or death, the volunteer

(1) is an active roster civilian volunteer member of an emergency service organization whose services were requested by the division of homeland security and emergency management in the Department of Military and Veterans' Affairs;

(2) is providing services requested by the Department of Military and Veterans' Affairs during a disaster emergency declared under AS 26.20.040 or AS 26.23.020 ;

(3) is not an employee of an agency of the United States, this state, or a political subdivision of this state; and

(4) is not otherwise covered for that injury or death by an employer's workers' compensation insurance policy or self-insurance certificate.

(c) The gross weekly earnings for a resident of this state temporarily engaged as a civilian volunteer under this section are the minimum gross weekly earnings paid to an employee employed by this state to perform equivalent work, or, if an employee is not employed by this state to perform equivalent work, the state average weekly wage, but the gross weekly earnings for calculating compensation may not be less than the minimum wage computed on the basis of 40 hours of work a week.

AS 23.30.245. Invalid Agreements.

(a) An agreement by an employee to pay a portion of the premium paid by the employer to a carrier or to contribute to a benefit fund or department maintained by the employer for the purpose of providing compensation or medical services and supplies as required by this chapter is not valid. An employer who makes a deduction for this purpose from the pay of an employee entitled to the benefits of this chapter is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than \$1,000.

(b) An agreement by an employee to waive the right to compensation under this chapter is not valid.

AS 23.30.247. Discrimination Prohibited.

(a) An employer may not discriminate in hiring, promotion, or retention policies or practices against an employee who has in good faith filed a claim for or received benefits under this chapter. An employer who violates this section is liable to the employee for damages to be assessed by the court in a private civil action.

(b) This section may not be construed to prevent an employer from basing hiring, promotion, or retention policies or practices on considerations of the employee's safety practices or the employee's physical and mental abilities; nor may this section be construed so as to create employment rights not otherwise in existence.

(c) This section may not be construed to prohibit an employer from requiring a prospective employee to fill out a preemployment questionnaire or application regarding the person's prior health or disability history as long as it is meant to either document written notice for second injury fund reimbursement under [AS 23.30.205](#) (c) or determine whether the employee has the physical or mental capacity to meet the documented physical or mental demands of the work.

AS 23.30.250. Penalties For Fraudulent or Misleading Acts; Damages in Civil Actions.

(a) A person who (1) knowingly makes a false or misleading statement, representation, or submission related to a benefit under this chapter; (2) knowingly assists, abets, solicits, or conspires in making a false or misleading submission affecting the payment, coverage, or other benefit under this chapter; (3) knowingly misclassifies employees or engages in deceptive leasing practices for the purpose of evading full payment of workers' compensation insurance premiums; or (4) employs or contracts with a person or firm to coerce or encourage an individual to file a fraudulent compensation claim is civilly liable to a person adversely affected by the conduct, is guilty of theft by deception as defined in AS 11.46.180 , and may be punished as provided by AS 11.46.120 - 11.46.150.

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

(c) To the extent allowed by law, in a civil action under (a) of this section, an award of damages by a court or jury may include compensatory damages and an award of three times the amount of damages sustained by the person, subject to AS 09.17. Attorney fees may be awarded to a prevailing party as allowed by law.

AS 23.30.255. Penalty For Failure to Pay Compensation.

(a) An employer required to secure the payment of compensation under this chapter who fails to do so is guilty of a class B felony if the amount involved exceeds \$25,000 or a class C felony if the amount involved is \$25,000 or less. If the employer is a corporation, its president, secretary, and treasurer are also severally liable to the fine or imprisonment imposed for the failure of the corporation to secure the payment of compensation. The president, secretary, and treasurer are severally personally liable, jointly with the corporation, for the compensation or other benefit which accrues under this chapter in respect to an injury which happens to an employee of the corporation while it has failed to secure the payment of compensation as required by AS 23.30.075 .

(b) An employer who knowingly transfers, sells, encumbers, assigns, or in any manner disposes of, conceals, secretes, or destroys any property after one of the employer's employees has been injured within the scope of this chapter, with intent to avoid the payment of compensation under this chapter to the employee or the employee's dependents, is guilty of a class B felony if the amount involved exceeds \$25,000 or a class C felony if the amount involved

is \$25,000 or less. If the employer is a corporation, its president, secretary, and treasurer are also severally liable to the penalty of imprisonment as well as jointly liable with the corporation for the fine.

(c) This section does not affect any other liability of the employer under this chapter.

AS 23.30.260. Penalty For Receiving Unapproved Fees and Soliciting.

(a) A person is guilty of a misdemeanor and, upon conviction, is punishable for each offense by a fine of not more than \$1,000, or by imprisonment for not more than one year, or by both, if the person

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

(2) makes it a business to solicit employment for a lawyer or for the person making the solicitation with respect to a claim or award for compensation.

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

AS 23.30.263. Immunity From Civil Liability For Workplace Safety Inspections.

An employer's safety inspector is not liable for civil damages for an injury to an employee of that employer resulting from an act or omission in performing or failing to perform a loss control service, a workplace safety inspection, or a safety advisory service provided in connection with an employer's workers' compensation insurance coverage, unless the act or failure to act constitutes intentional misconduct. In this section, "safety inspector" means

(1) a carrier and an employee or agent of the carrier;

(2) a trade association of which the employer is a member; or

(3) a person providing adjusting or inspection services to an employer who is a member of an association established under AS 21.76.010 or to an employer who is self-insured under AS 23.30.090 .

AS 23.30.265. [Renumbered as AS 23.30.395].

Repealed or Renumbered

AS 23.30.270. [Renumbered as AS 23.30.400].

Repealed or Renumbered

AS 23.30.280. Investigation of Fraud; Staffing.

(a) The director shall establish a section within the division for the investigation of fraudulent or misleading acts under AS 23.30.250 and other fraudulent acts relating to workers' compensation.

(b) The director may investigate facts reported under this section and may refer facts indicating a possible violation of law to the appropriate prosecutor or agency. If the director determines that there is credible evidence that a person obtained a payment, compensation, medical treatment, or other benefit provided under this chapter by a fraudulent act or false or misleading statement or representation as provided in AS 23.30.250 (a), the director shall notify the affected employer, insurer, and adjuster upon conclusion of the investigation. If the fraudulent act or false or misleading statement or representation was perpetrated against the division, the director may file a petition as provided in AS 23.30.110 for an order of forfeiture against the person, precluding, in whole or in part, the person from future payment, compensation, medical treatment, or other benefit provided under this chapter.

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

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

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

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

- (2) the division of workers' compensation, the division of insurance in the Department of Commerce, Community, and Economic Development, or an agency in another state that regulates insurance or workers' compensation;
- (3) an insurer or adjuster or its agents, employees, or designees, or the risk manager of a self-insured employer under this chapter.
- (f) The provisions of (e) of this section do not preclude liability for civil damages as described in (e) of this section if the liability arose as a result of gross negligence or reckless or intentional misconduct.
- (g) The papers, reports, documents, and evidence received under this section or in an investigation arising from information received under this section are not subject to public inspection for so long as the director considers confidentiality to be in the public interest or reasonably necessary to complete an investigation or protect the person investigated from unwarranted injury. Papers, reports, documents, and other evidence related to an investigation under this section are confidential.
- (h) If the material that the director seeks to obtain is located outside the state, the material may be made available to the director to examine at the place where the material is located. The director may designate representatives, including officials of the state in which the material is located, to inspect the material on behalf of the director. The director may respond to a request from an official of another state for similar material.
- (i) Papers, reports, documents, and other evidence related to an investigation under this section are not subject to subpoena unless, after notice to the director and a hearing, a court determines that the director would not be unduly hindered by public inspection.

AS 23.30.395. Definitions.

In this chapter

- (1) "adoption" or "adopted" means legal adoption before the time of the injury;
- (2) "arising out of and in the course of employment" includes employer-required or supplied travel to and from a remote job site; activities performed at the direction or under the control of the employer; and employer-sanctioned activities at employer-provided facilities; but excludes recreational league activities sponsored by the employer, unless participation is required as a condition of employment, and activities of a personal nature away from employer-provided facilities;
- (3) "attending physician" means one of the following designated by the employee under AS 23.30.095 (a) or (b):
- (A) a licensed medical doctor;
- (B) a licensed doctor of osteopathy;
- (C) a licensed dentist or dental surgeon;
- (D) a licensed physician assistant acting under supervision of a licensed medical doctor or doctor of osteopathy;

- (E)** a licensed advanced nurse practitioner; or
- (F)** a licensed chiropractor;
- (4)** "board" means the Alaska Workers' Compensation Board;
- (5)** "brother" and "sister" include stepbrothers and stepsisters, half brothers and half sisters, and brothers and sisters by adoption, but do not include married brothers and married sisters unless wholly dependent on the employee;
- (6)** "carrier" means a person authorized to insure under this chapter and includes self-insurers;
- (7)** "child" includes a posthumous child, a child legally adopted before the injury of the employee, a child in relation to whom the deceased employee stood in loco parentis for at least one year before the time of injury, and a stepchild or acknowledged illegitimate child dependent upon the deceased, but does not include married children unless wholly dependent on the employee;
- (8)** "child," "grandchild," "brother," and "sister," include only persons who are under 19 years of age, persons who, though 19 years of age or over, are wholly dependent upon the deceased employee and incapable of self-support by reason of mental or physical disability, and persons of any age while they are attending the first four years of vocational school, trade school, or college, and persons of any age while they are attending high school;
- (9)** "chronic debilitating pain" means pain that is of more than six months duration and that is of sufficient severity that it significantly restricts the employee's ability to perform the activities of daily living;
- (10)** "commission" means the Workers' Compensation Appeals Commission;
- (11)** "commissioner" means the commissioner of labor and workforce development;
- (12)** "compensation" means the money allowance payable to an employee or the dependents of the employee as provided for in this chapter, and includes the funeral benefits provided for in this chapter;
- (13)** "death" as a basis for a right to compensation means only death resulting from an injury;
- (14)** "department" means the Department of Labor and Workforce Development;
- (15)** "director" means the director of the division of workers' compensation in the department;
- (16)** "disability" means incapacity because of injury to earn the wages which the employee was receiving at the time of injury in the same or any other employment;
- (17)** "division" means the division of workers' compensation in the department;
- (18)** "drugs" means a controlled substance as defined by law;
- (19)** "employee" means an employee employed by an employer as defined in (20) of this section;
- (20)** "employer" means the state or its political subdivision or a person employing one or more persons in connection with a business or industry coming within the scope of this chapter and carried on in this state;
- (21)** "grandchild" means a child as defined in (6) of this section;
- (22)** "gross earnings" means periodic payments, by an employer to an employee for employment before any authorized or lawfully required deduction or withholding of money by the employer, including compensation that is deferred at the option of the employee, and excluding irregular bonuses, reimbursement of expenses, expense allowances, and any benefit or payment to the employee that is not fully taxable to the employee during the pay period, except that the total amount of contributions made by an employer to a qualified pension or

profit sharing plan during the two plan years preceding the injury, multiplied by the percentage of the employee's vested interest in the plan at the time of injury, shall be included in the determination of gross earnings; the value of room and board if taxable to the employee may be considered in determining gross earnings; however, the value of room and board that would raise an employee's gross weekly earning above the state average weekly wage at the time of injury may not be considered;

(23) "gross weekly earnings" means gross weekly earnings as calculated under AS 23.30.220 (a);

(24) "injury" means accidental injury or death arising out of and in the course of employment, and an occupational disease or infection that arises naturally out of the employment or that naturally or unavoidably results from an accidental injury; "injury" includes breakage or damage to eyeglasses, hearing aids, dentures, or any prosthetic devices that function as part of the body and further includes an injury caused by the wilful act of a third person directed against an employee because of the employment;

(25) "married" includes a person who is divorced but is required by the decree of divorce to contribute to the support of the former spouse;

(26) "medical and related benefits" includes but is not limited to physicians' fees, nurses' charges, hospital services, hospital supplies, medicine and prosthetic devices, physical rehabilitation, and treatment for the fitting and training for use of such devices as may reasonably be required which arises out of or is necessitated by an injury, and transportation charges to the nearest point where adequate medical facilities are available;

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

(28) "palliative care" means medical care or treatment rendered to reduce or moderate temporarily the intensity of pain caused by an otherwise stable medical condition, but does not include those medical services rendered to diagnose, heal, or permanently alleviate or eliminate a medical condition;

(29) "parent" includes stepparents and parents by adoption, parents-in-law, and a person who for more than three years before the death of the deceased employee stood in the place of a parent to the employee, if dependent on the injured employee;

(30) "payroll taxes" means

(A) the amount that would be withheld under withholding tables in effect on the January 1 preceding the injury under the Internal Revenue Code of 1954 as amended and regulations issued under the code, as though the employee had claimed the maximum number of dependents for actual dependency, blindness, and old age to which the employee is entitled on the date on which the employee is injured; and

(B) the amount that is or would be deducted or withheld as of the January 1 preceding the injury under the Social Security Act of 1935 as amended from the amount of earnings of the employee at the time of the injury as if the earnings were earned at the beginning of the

calendar year in which the employee was injured and regardless of whether the amount was actually withheld or the earnings were subject to withholding;

(31) "physician" includes doctors of medicine, surgeons, chiropractors, osteopaths, dentists, and optometrists;

(32) "prosthetic devices" includes but is not limited to eye glasses, hearing aids, dentures, and such other devices and appliances, and the repair or replacement of the devices necessitated by ordinary wear and arising out of an injury;

(33) "regularly organized volunteer fire department" means a volunteer fire department registered with the state fire marshal which has official recognition and financial support from the political subdivision where it is situated;

(34) "reserve rate" means the unencumbered second injury fund balance on October 31 of each year as a percentage of disbursements from the second injury fund during the 12-month period ending on June 30 of the same calendar year;

(35) "self-insurer" means an employer who, instead of insuring liability under this chapter as it provides, elects to pay directly the compensation provided for, and who has furnished to the board satisfactory proof of the employer's financial ability to make the direct payments;

(36) "volunteer ambulance attendant" means an individual who serves as an ambulance attendant on a temporary, voluntary basis with a volunteer or full-time fire department or municipal ambulance service of a general law or home rule municipality;

(37) "volunteer emergency medical technician" means a person who (A) is certified by the state as an emergency medical technician under AS 18.08 or (B) is an active roster volunteer member of a state certified emergency medical service and is registered with the Department of Health and Social Services, and who provides emergency medical services on a voluntary basis;

(38) "volunteer fire fighter" means an individual whose name is registered with the state fire marshal as a member of a regularly organized volunteer fire department or who serves with a full-time fire department on a temporary, voluntary basis;

(39) "volunteer police officer" means an individual who serves as a peace officer with a full-time police department of a general law or home rule municipality on a temporary, voluntary basis;

(40) "widow" includes only the decedent's wife living with or dependent for support upon the decedent at the time of death, or living apart for justifiable cause or by reason of the decedent's desertion at such a time;

(41) "widower" includes only the decedent's husband living with or dependent for support upon the decedent at the time of death, or living apart for justifiable cause or by reason of the decedent's desertion at such a time.

AS 23.30.400. Short Title.

This chapter may be cited as Alaska Workers' Compensation Act.