

SENATE BILL NO. 40

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTIETH LEGISLATURE - FIRST SESSION

BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 1/25/17

Referred: Labor and Commerce, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to workers' compensation; repealing the second injury fund upon
2 satisfaction of claims; relating to service fees and civil penalties for the workers' safety
3 programs and the workers' compensation program; relating to the liability of specified
4 officers and members of specified business entities for payment of workers'
5 compensation benefits and civil penalties; relating to civil penalties for underinsuring or
6 failing to insure or provide security for workers' compensation liability; relating to
7 preauthorization and timely payment for medical treatment and services provided to
8 injured employees; relating to incorporation of reference materials in workers'
9 compensation regulations; relating to proceedings before the Workers' Compensation
10 Board; providing for methods of payment for workers' compensation benefits; relating
11 to the workers' compensation benefits guaranty fund authority to claim a lien; excluding
12 independent contractors from workers' compensation coverage; establishing the

1 **circumstances under which certain nonemployee executive corporate officers and**
 2 **members of limited liability companies may obtain workers' compensation coverage;**
 3 **relating to the duties of injured employees to report income or work; relating to**
 4 **misclassification of employees and deceptive leasing; defining 'employee'; relating to the**
 5 **Workers' Compensation Board's approval of attorney fees in a settlement agreement;**
 6 **and providing for an effective date."**

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

8 *** Section 1.** AS 23.05.067(a) is amended to read:

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

14 (1) for each employer,
 15 (A) except as provided in (b) of this section, the service fee
 16 shall be paid each year to the department at the time that the annual report is
 17 required to be filed under AS 23.30.155(m) or (n); and
 18 (B) the service fee is 2.9 percent of all payments reported to the
 19 division of workers' compensation in the department under AS 23.30.155(m)
 20 or (n), except second injury fund payments; and

21 (2) for each insurer, the director of the division of insurance shall,
 22 under (e) of this section, deposit from funds received from the insurer under
 23 AS 21.09.210 a service fee of 2.5 [1.82] percent of the direct premium income for
 24 workers' compensation insurance received by the insurer during the year ending on the
 25 preceding December 31, subject to all the deductions specified in AS 21.09.210(b).

26 *** Sec. 2.** AS 23.05.067(a), amended by sec. 1 of this Act, is amended to read:

27 (a) Each insurer providing workers' compensation insurance and each
 28 employer who is self-insured or uninsured for purposes of AS 23.30 in this state shall
 29 pay an annual service fee to the department for the administrative expenses of the state

1 for workers' safety programs under AS 18.60 and the workers' compensation program
2 under AS 23.30 as follows:

3 (1) for each employer,

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

7 (B) the service fee is 2.9 percent of all payments reported to the
8 division of workers' compensation in the department under AS 23.30.155(m)
9 or (n), [EXCEPT SECOND INJURY FUND PAYMENTS]; and

10 (2) for each insurer, the director of the division of insurance shall,
11 under (e) of this section, deposit from funds received from the insurer under
12 AS 21.09.210 a service fee of 2.5 percent of the direct premium income for workers'
13 compensation insurance received by the insurer during the year ending on the
14 preceding December 31, subject to all the deductions specified in AS 21.09.210(b).

15 * **Sec. 3.** AS 23.05.067(e) is amended to read:

16 (e) Annual service fees and civil penalties collected under this section **and**
17 **AS 23.30.155(c) and (m)** shall be deposited in the workers' safety and compensation
18 administration account in the state treasury. Under AS 37.05.146(c), the service fees
19 and civil penalties shall be accounted for separately, and appropriations from the
20 account are not made from the unrestricted general fund. The legislature may
21 appropriate money from the account for expenditures by the department for necessary
22 costs incurred by the department in the administration of the workers' safety programs
23 contained in AS 18.60 and of the Alaska Workers' Compensation Act contained in
24 AS 23.30. Nothing in this subsection creates a dedicated fund or dedicates the money
25 in the account for a specific purpose. Money deposited in the account does not lapse at
26 the end of a fiscal year unless otherwise provided by an appropriation.

27 * **Sec. 4.** AS 23.30.015(e) is amended to read:

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

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

31 (A) the expenses incurred by the employer with respect to the

1 action or compromise, including a reasonable attorney fee determined by the
2 board;

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

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

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

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

17 * **Sec. 5.** AS 23.30.070(a) is amended to read:

18 (a) Within 10 days from the date the employer has knowledge of an injury or
19 death or from the date the employer has knowledge of a disease or infection, alleged
20 by the employee or on behalf of the employee to have arisen out of and in the course
21 of the employment, the employer shall **file with** [SEND TO] the division a report
22 setting out

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

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

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

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

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

29 * **Sec. 6.** AS 23.30.070(b) is amended to read:

30 (b) Additional reports with respect to the injury and to the condition of the
31 employee shall be **filed** [SENT] by the employer **with** [TO] the division at the times

1 and in the manner that the director prescribes.

2 * **Sec. 7.** AS 23.30.070(d) is amended to read:

3 (d) **Filing** [MAILING] of the report **with** [AND A COPY TO] the division **in**
 4 **a format prescribed by the director** [IN A STAMPED ENVELOPE], within the
 5 time prescribed in (a) or (b) of this section, is compliance with this section.

6 * **Sec. 8.** AS 23.30.070(f) is amended to read:

7 (f) An employer who fails or refuses to **file** [SEND] a report required of the
 8 employer by this section or who fails or refuses to **file** [SEND] the report required by
 9 (a) of this section within the time required shall, if so required by the board, pay the
 10 employee or the legal representative of the employee or other person entitled to
 11 compensation by reason of the employee's injury or death an additional award equal to
 12 20 percent of the amounts that were unpaid when due. The award shall be against
 13 either the employer or the insurance carrier, or both.

14 * **Sec. 9.** AS 23.30.075(b) is repealed and reenacted to read:

15 (b) If an employer is a corporation, limited liability company, or limited
 16 liability partnership, corporate executive officers or members or partners who have at
 17 least a 10 percent ownership in the business entity shall be personally, jointly, and
 18 severally liable together with the business entity for the payment of all compensation
 19 or other benefits for which the business entity is liable under this chapter if the
 20 business entity is not insured or qualified as a self-insurer at the time of the injury or
 21 death. If an employer is a corporation, limited liability company, or limited liability
 22 partnership, corporate executive officers, or members or partners who have at least a
 23 10 percent ownership in the business entity shall be personally, jointly, and severally
 24 liable together with the business entity for the payment of a civil penalty under
 25 AS 23.30.080 for which the business entity is liable.

26 * **Sec. 10.** AS 23.30.080(e) is amended to read:

27 (e) If a representative of the department investigates an employer's failure to
 28 file the evidence of compliance required by AS 23.30.085 and, after investigation,
 29 there is substantial evidence that the employer failed to insure or provide security as
 30 required by AS 23.30.075, the representative shall inform the employer. The
 31 representative may request the director to issue a stop order prohibiting the use of

1 employee labor by the employer until the employer insures or provides security as
 2 required by AS 23.30.075. The director may issue a stop order, without a hearing,
 3 based on the representative's investigation. The director shall dissolve a stop order
 4 issued under this subsection upon receipt of substantial evidence that the employer is
 5 insured or has provided security as required by AS 23.30.075(a). If an employer fails
 6 to comply with a stop order issued under this subsection, the division may [PETITION
 7 THE BOARD TO ASSESS A CIVIL PENALTY. THE BOARD MAY] assess a civil
 8 penalty of \$1,000 a day. An employer who is assessed a penalty under this subsection
 9 may not obtain a public contract with the state or a political subdivision of the state for
 10 the three years following violation of the stop order.

11 * **Sec. 11.** AS 23.30.080(f) is repealed and reenacted to read:

12 (f) If an employer fails to insure or provide security as required by
 13 AS 23.30.075 or is underinsured as result of misclassifying employees or engaging in
 14 deceptive leasing practices as defined in AS 23.30.250, the division may assess a civil
 15 penalty of up to three times the workers' compensation insurance premium that the
 16 employer would have paid if the employer had insured, provided the required security
 17 or properly classified employees. The division shall calculate the premium based on
 18 the employer's payroll and the assigned risk rates approved by the division of
 19 insurance in effect at the time the employer was uninsured or underinsured. The
 20 division shall apply aggravating and mitigating factors adopted in regulation to set the
 21 penalty amount. Notwithstanding AS 23.30.250(e), a civil penalty under this
 22 subsection may be assessed against an employer that misclassifies employees or
 23 engages in deceptive leasing practices, even if the employer does not do so knowingly
 24 and with the purpose of evading full payment for workers' compensation insurance
 25 premiums.

26 * **Sec. 12.** AS 23.30.080(g) is amended to read:

27 (g) **The** [IF AN EMPLOYER FAILS TO PAY A CIVIL PENALTY ORDER
 28 ISSUED UNDER (D), (E), OR (F) OF THIS SECTION WITHIN SEVEN DAYS
 29 AFTER THE DATE OF SERVICE OF THE ORDER UPON THE EMPLOYER,
 30 THE] director may declare **an** [THE] employer in default **if the employer (1) fails to**
 31 **pay or contest a civil penalty assessed under this section not later than 30 days**

1 **after the date of service of notice on the employer; (2) fails to pay a civil penalty**
 2 **not later than 30 days after the board orders payment; or (3) fails to pay a civil**
 3 **penalty in accordance with the terms of a payment plan.** The director shall file a
 4 certified copy of the penalty order, **notice, or payment plan,** and declaration of
 5 default with the clerk of the superior court. The court shall, upon the filing of the copy
 6 [OF THE ORDER] and declaration, enter judgment for the amount declared in default
 7 if it is in accordance with law. Anytime after a declaration of default, the attorney
 8 general shall, when requested to do so by the director, take appropriate action to
 9 ensure collection of the defaulted payment. Review of the judgment may be had as
 10 provided under the Alaska Rules of Civil Procedure. Final proceedings to execute the
 11 judgment may be had by writ of execution.

12 * **Sec. 13.** AS 23.30.080 is amended by adding new subsections to read:

13 (h) If the division requests copies of records required to be kept under
 14 AS 23.05.080 or information relating to an investigation of an employer's compliance
 15 with the insurance provisions of this chapter, and the employer does not provide the
 16 requested records or information not later than 30 days after service of the written
 17 request, the division may assess a civil penalty against the employer of \$150 for each
 18 day the employer is late, up to a maximum penalty of \$10,000.

19 (i) A civil penalty assessed under this section may not be suspended in full or
 20 in part.

21 (j) The division and an employer may agree to a payment plan for a civil
 22 penalty assessed under this section. The board in reviewing an assessed civil penalty
 23 under (k) of this section may order a payment plan. Interest under any payment plan
 24 shall accrue at the rate specified in AS 09.30.070(a) that is in effect on the date the
 25 payment plan was agreed to or ordered.

26 (k) An employer may contest a civil penalty assessed by the division under
 27 (e), (f), or (h) of this section by filing a petition with the board not later than 30 days
 28 after the notice of the civil penalty is served on the employer. The board shall schedule
 29 a prehearing not later than 30 days after the filing date of the petition for the purpose
 30 of setting a hearing date. The failure of an employer to file evidence of compliance as
 31 required by AS 23.30.085 creates a rebuttable presumption that the employer failed to

1 insure or provide security as required by AS 23.30.075. If the employer disputes the
 2 division's calculation of the amount that the employer would have paid for workers'
 3 compensation insurance during the time the employer was uninsured or underinsured,
 4 the employer bears the burden of producing evidence and proving that the workers'
 5 compensation insurance premium would have been less than the division's calculation.
 6 If the employer does not timely file the petition and cannot show good cause for any
 7 late filing of the petition, the assessment of the civil penalty is considered final and not
 8 subject to review by the board or a court.

9 * **Sec. 14.** AS 23.30.082(a) is amended to read:

10 (a) The workers' compensation benefits guaranty fund is established in the
 11 general fund to carry out the purposes of this section. The fund is composed of **(1)**
 12 civil penalty **and interest** payments made by employers under AS 23.30.080; **(2) civil**
 13 **penalty payments under AS 23.30.085;** **(3)** [,] income earned on investment of the
 14 money in the fund; **(4)** [,] money deposited in the fund by the department; [,] and **(5)**
 15 appropriations to the fund, if any. However, money appropriated to the fund does not
 16 lapse. Amounts in the fund may be appropriated for claims against the fund, for
 17 expenses directly related to fund operations and claims, and for legal expenses.

18 * **Sec. 15.** AS 23.30.085 is repealed and reenacted to read:

19 **Sec. 23.30.085. Duty of employer or insurer to file evidence of compliance.**

20 (a) An employer or insurer subject to this chapter shall initially file evidence of
 21 compliance with the insurance provisions of this chapter with the division, in the
 22 format prescribed by the director, not later than 30 days after acquiring insurance. The
 23 employer or insurer also shall file evidence of compliance not later than 30 days after
 24 the termination of the employer's insurance by expiration or cancellation. The
 25 requirements in this section do not apply to an employer who has certification from
 26 the division of the employer's financial ability to pay compensation directly without
 27 insurance.

28 (b) If an employer or insurer fails, refuses, or neglects to comply with this
 29 section, the employer or insurer shall be subject to a civil penalty of \$100 for each day
 30 the employer or insurer is late. Total penalties under this subsection shall not exceed
 31 \$1,000 for each late filing and \$10,000 for each employer or insurer each year for late

1 filings under this section.

2 * **Sec. 16.** AS 23.30.097(d) is amended to read:

3 (d) An employer shall pay **or controvert** an employee's bills for medical
 4 treatment under this chapter, excluding prescription charges or transportation for
 5 medical treatment, **not later than** [WITHIN] 30 days after the date that the employer
 6 receives the provider's bill or a completed report as required by AS 23.30.095(c),
 7 whichever is later. **An employer shall authorize or controvert medical treatment**
 8 **or services, excluding prescriptions or transportation for medical treatment, not**
 9 **later than 60 days after an employer receives the provider's written request for**
 10 **medical treatment, including the estimated cost.**

11 * **Sec. 17.** AS 23.30.098 is amended to read:

12 **Sec. 23.30.098. Regulations.** Under AS 44.62.245(a)(2), in adopting or
 13 amending regulations under this chapter, the department may incorporate future
 14 amended versions of a document or reference material incorporated by reference if the
 15 document or reference material is one of the following:

16 (1) Current Procedural Terminology Codes, produced by the American
 17 Medical Association;

18 (2) Healthcare Common Procedure Coding System, produced by the
 19 **federal Centers for Medicare and Medicaid Services** [AMERICAN MEDICAL
 20 ASSOCIATION];

21 (3) International Classification of Diseases, published by the **World**
 22 **Health Organization** [AMERICAN MEDICAL ASSOCIATION];

23 (4) Relative Value Guide, produced by the American Society of
 24 Anesthesiologists;

25 (5) Diagnostic and Statistical Manual of Mental Disorders, produced
 26 by the American Psychiatric Association;

27 (6) Current Dental Terminology, published by the American Dental
 28 Association;

29 (7) Resource-Based Relative Value Scale, produced by the federal
 30 Centers for Medicare and Medicaid Services;

31 (8) Ambulatory Payment Classifications, produced by the federal

1 Centers for Medicare and Medicaid Services; [OR]

2 (9) Medicare Severity Diagnosis Related Groups, produced by the
3 federal Centers for Medicare and Medicaid Services;

4 (10) International Classification of Diseases, Tenth Revision,
5 Clinical Modification, developed by the National Center for Health Statistics;

6 (11) Clinical Diagnostic Laboratory Services, produced by the
7 federal Centers for Medicare and Medicaid Services;

8 (12) Durable Medical Equipment, Prosthetics, Orthotics, and
9 Supplies, produced by the federal Centers for Medicare and Medicaid Services;

10 (13) Payment Allowance Limits for Medicare Part B Drugs,
11 Average Sale Price, produced by the federal Centers for Medicare and Medicaid
12 Services;

13 (14) Ambulance Fee Schedule, produced by the federal Centers for
14 Medicare and Medicaid Services;

15 (15) Hospital Outpatient Prospective Payment System, produced
16 by the federal Centers for Medicare and Medicaid Services; or

17 (16) Ambulatory Surgical Center Payment System, produced by
18 the federal Centers for Medicare and Medicaid Services.

19 * **Sec. 18.** AS 23.30.110(c) is repealed and reenacted to read:

20 (c) The board shall schedule a prehearing not later than 30 days after a claim
21 is filed. At the prehearing, the board or the board's designee shall issue a scheduling
22 order that includes a discovery plan and appropriate deadlines, and a date for the
23 hearing. The board or the board's designee may modify the scheduling order, including
24 changing the hearing date, on the board's own motion, if the parties agree to the
25 modification, or upon a showing of good cause by the party seeking the modification.
26 The board shall serve notice on each party at least 10 days before the hearing.

27 * **Sec. 19.** AS 23.30.110(d) is amended to read:

28 (d) At the hearing, the claimant and the employer may each present evidence
29 in respect to the claim and may be self-represented, or represented by an attorney
30 licensed to practice law in this state or, for a person who is mentally incompetent,
31 a minor, or deceased, by a guardian or other representative appointed by a court.

1 **An employer is self-represented when acting through its insurer or the adjusting**
 2 **company handling the claim for the employer's insurer. The workers'**
 3 **compensation benefits guaranty fund is self-represented when acting through its**
 4 **administrator or an adjusting company handling the claim under contract for the**
 5 **fund. The division is self-represented when acting through its investigators** [ANY
 6 PERSON AUTHORIZED IN WRITING FOR THAT PURPOSE].

7 * **Sec. 20.** AS 23.30.110 is amended by adding a new subsection to read:

8 (i) The board shall file its decision not later than 30 days after the hearing
 9 record closes.

10 * **Sec. 21.** AS 23.30.155(a) is amended to read:

11 (a) Compensation under this chapter shall be paid periodically, promptly, and
 12 directly to the person entitled to it, without an award, except where liability to pay
 13 compensation is controverted by the employer. To controvert a claim, the employer
 14 must file a notice, **in a format** [ON A FORM] prescribed by the director, stating

15 (1) that the right of the employee to compensation is controverted;

16 (2) the name of the employee;

17 (3) the name of the employer;

18 (4) the date of the alleged injury or death; and

19 (5) the type of compensation and all grounds upon which the right to
 20 compensation is controverted.

21 * **Sec. 22.** AS 23.30.155(b) is amended to read:

22 (b) The first installment of compensation, **excluding medical benefits, shall**
 23 **be paid** [BECOMES DUE] on **or before** the **21st** [14TH] day after the employer has
 24 knowledge of the injury or death. [ON THIS DATE, ALL COMPENSATION THEN
 25 DUE SHALL BE PAID.] Subsequent compensation, **excluding medical benefits,**
 26 shall be paid in installments, every **21** [14] days, except where the board determines
 27 that payment in installments should be made monthly or at some other period.
 28 **Medical benefits shall be paid in accordance with AS 23.30.095 and 23.30.097.**

29 * **Sec. 23.** AS 23.30.155(c) is amended to read:

30 (c) The insurer or adjuster shall notify the division **in a format** [AND THE
 31 EMPLOYEE ON A FORM] prescribed by the director that the payment of

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

20 * **Sec. 24.** AS 23.30.155(d) is amended to read:

21 (d) If the employer controverts the right to compensation, the employer shall
 22 file with the division, **in a format prescribed by the director,** [AND SEND TO THE
 23 EMPLOYEE] a notice of controversion on or before the 21st day after the employer
 24 has knowledge of the alleged injury or death. If the employer controverts the right to
 25 compensation, **excluding medical benefits,** after payments have begun, the employer
 26 shall file with the division, **in a format prescribed by the director,** [AND SEND TO
 27 THE EMPLOYEE] a notice of controversion **not later than the date** [WITHIN
 28 SEVEN DAYS AFTER] an installment of compensation payable without an award is
 29 due **under (b) of this section. If the employer controverts medical treatment, the**
 30 **employer shall file with the division, in a format prescribed by the director, a**
 31 **notice of controversion not later than when the payment, reimbursement, or**

1 **authorization for medical treatment is due under AS 23.30.097.** When payment of
 2 temporary disability benefits is controverted solely on the grounds that another
 3 employer or another insurer of the same employer may be responsible for all or a
 4 portion of the benefits, the most recent employer or insurer who is party to the claim
 5 and who may be liable shall make the payments during the pendency of the dispute.
 6 When a final determination of liability is made, any reimbursement required, including
 7 interest at the statutory rate, and all costs and attorney fees incurred by the prevailing
 8 employer, shall be made **not later than** [WITHIN] 14 days after the determination.

9 * **Sec. 25.** AS 23.30.155(e) is amended to read:

10 (e) If any installment of compensation, **excluding medical benefits,** payable
 11 without an award is [NOT] paid **late** [WITHIN SEVEN DAYS AFTER IT
 12 BECOMES DUE], as provided in (b) of this section, there shall be added to the unpaid
 13 installment an amount equal to 25 percent of the installment. **If a bill for medical**
 14 **treatment, including prescription charges or transportation for medical**
 15 **treatment, is paid or reimbursed late, or a request for medical treatment is not**
 16 **timely authorized as provided in AS 23.30.097, there shall be added an amount**
 17 **equal to 25 percent of the bill, reimbursement, or estimated cost of requested**
 18 **medical treatment.** This additional amount shall be paid at the same time as, and in
 19 addition to, the installment, **bill, or reimbursement, or sent with authorization for**
 20 **medical treatment,** unless notice is filed under (d) of this section or unless the
 21 nonpayment **or late authorization** is excused by the board after a showing by the
 22 employer that owing to conditions over which the employer had no control the
 23 installment, **bill, or reimbursement** could not be paid **or the request could not be**
 24 **authorized** within the period prescribed for the payment **or authorization.** The
 25 additional amount shall be paid directly to the recipient to whom the unpaid
 26 installment, **bill, or reimbursement** was to be paid **or, if authorization of medical**
 27 **treatment was requested, to the employee seeking the medical treatment.**

28 * **Sec. 26.** AS 23.30.155(m) is amended to read:

29 (m) On or before March 1 of each year, the insurer or adjuster shall file a
 30 verified annual report **in a format** [ON A FORM] prescribed by the director stating
 31 the total amount of all compensation by type, the number of claims received and the

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

22 * **Sec. 27.** AS 23.30.155(q) is amended to read:

23 (q) **Compensation** [UNLESS COMPENSATION] due the employee under
 24 this chapter **must be** [IS] paid by negotiable instrument that is drawn on a state or
 25 federal financial institution, **by prepaid debit card, or by electronic funds transfer**
 26 [THE EMPLOYER SHALL INCREASE THE WEEKLY RATE OF
 27 COMPENSATION DUE THE EMPLOYEE UNDER AS 23.30.175 BY TWO
 28 PERCENT].

29 * **Sec. 28.** AS 23.30.165(a) is amended to read:

30 (a) **If an** [EACH] employee, **a** [AND] beneficiary, **or the workers'**
 31 **compensation benefits guaranty fund is** entitled to compensation under the

1 provisions of this chapter, **the person or the fund** has a lien for the full amount of the
 2 compensation the person **or the fund** is entitled to, including costs and disbursements
 3 of suit and attorney fees allowed, **on** [UPON] all of the property in connection with
 4 the construction, preservation, maintenance, or operation of which the work of the
 5 employee was being performed at the time of the injury or death. For example: in the
 6 case of an employee injured or killed while engaged in mining or in work connected
 7 with mining, the lien extends to the entire mine and all property used in connection
 8 with it; and in the case of an employee injured or killed while engaged in fishing or in
 9 the packing, canning, or salting of fish, or other branch of the fish industry, the lien
 10 extends to the entire packing, fishing, salting, or canning plant or establishment and all
 11 property used in connection with it; and this is the case with other businesses,
 12 industries, works, occupations, and employments. **If the workers' compensation**
 13 **benefits guaranty fund is entitled to a civil penalty assessed under AS 23.30.080,**
 14 **the fund has a lien for the full amount of the civil penalty on all of the property in**
 15 **connection with the construction, preservation, maintenance, or operation of the**
 16 **uninsured or underinsured employer.**

17 * **Sec. 29.** AS 23.30.165(d) is amended to read:

18 (d) A person **or the workers' compensation benefits guaranty fund**
 19 claiming a lien under this chapter shall, **not later than** [WITHIN] one year after the
 20 date of the injury from which the claim of compensation arises, record in the office of
 21 the recorder of the recording district in which the property affected by the lien is
 22 located a notice of lien signed and verified by the claimant, [OR] someone on behalf
 23 of the claimant, **or the fund,** and stating [, IN SUBSTANCE,] the name of the person
 24 injured or killed out of which injury or death the claim of compensation arises, the
 25 name of the employer of the injured or deceased person at the time of the injury or
 26 death, a description of the property affected or covered by the lien, and the name of
 27 the owner or reputed owner of the property. **In claiming a lien for a civil penalty**
 28 **under AS 23.30.080, the workers' compensation benefits guaranty fund shall, not**
 29 **later than one year after the date of a declaration of default, record in the office**
 30 **of the recorder of the recording district in which the property affected by the lien**
 31 **is located a signed and verified notice of lien stating the name of the employer**

1 assessed a civil penalty under AS 23.30.080, a description of the property affected
 2 or covered by the lien, and the name of the owner or reputed owner of the
 3 property.

4 * **Sec. 30.** AS 23.30.205 is amended by adding a new subsection to read:

5 (g) Claims for reimbursement may not be submitted to the second injury fund
 6 after September 1, 2017. The fund shall continue to make reimbursement payments on
 7 claims accepted before July 1, 2018, or ordered by the board, until the fund's liabilities
 8 for the claim are extinguished.

9 * **Sec. 31.** AS 23.30.230(a) is amended to read:

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

- 11 (1) a part-time baby-sitter;
- 12 (2) a cleaning person;
- 13 (3) harvest help and similar part-time or transient help;
- 14 (4) a person employed as a sports official on a contractual basis and
 15 who officiates only at sports events in which the players are not compensated; in this
 16 paragraph, "sports official" includes an umpire, referee, judge, scorekeeper,
 17 timekeeper, organizer, or other person who is a neutral participant in a sports event;
- 18 (5) a person employed as an entertainer on a contractual basis;
- 19 (6) a commercial fisherman, as defined in AS 16.05.940;
- 20 (7) an individual who drives a taxicab whose compensation and written
 21 contractual arrangement is as described in AS 23.10.055(a)(13), unless the hours
 22 worked by the individual or the areas in which the individual may work are restricted
 23 except to comply with local ordinances;
- 24 (8) a participant in the Alaska temporary assistance program
 25 (AS 47.27) who is engaged in work activities required under AS 47.27.035 other than
 26 subsidized or unsubsidized work or on-the-job training;
- 27 (9) a person employed as a player or coach by a professional hockey
 28 team if the person is covered under a health care insurance plan provided by the
 29 professional hockey team, the coverage is applicable to both work related and
 30 nonwork related injuries, and the coverage provides medical and related benefits as
 31 required under this chapter, except that coverage may not be limited to two years from

1 the date of injury as described under AS 23.30.095(a); in this paragraph, "health care
2 insurance" has the meaning given in AS 21.12.050; [AND]

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

9 **(11) a person employed as an independent contractor; a person is**
10 **an independent contractor only if the person**

11 **(A) maintains a licensed business, the success or**
12 **profitability of which does not depend exclusively or primarily on the**
13 **individual for whom or the entity for which services are performed;**

14 **(B) has a federal employer identification number issued by**
15 **the Internal Revenue Service or has filed business or self-employment**
16 **income tax returns with the Internal Revenue Service the previous tax**
17 **year, or, for a new business that was not operating in the previous tax**
18 **year, intends to file business or self-employment tax returns with the**
19 **Internal Revenue Service;**

20 **(C) has an express contract to perform the services;**

21 **(D) maintains liability insurance or other insurance policies**
22 **necessary to protect the employees, financial interests, and customers of**
23 **the person's business;**

24 **(E) is free from direction and control over the means and**
25 **manner of providing services, subject only to the right of the individual**
26 **for whom or entity for which the services are provided to specify the**
27 **desired results, completion schedule, or range of work hours;**

28 **(F) is engaged in a trade, occupation, profession, or**
29 **business to provide services that are outside the usual course of business**
30 **for the individual for whom or the entity for which the services are**
31 **performed;**

1 (G) incurs most of the expenses for materials, tools,
 2 equipment, labor, and other operational costs necessary for the person's
 3 business;

4 (H) has the opportunity for profit and may suffer loss based
 5 on the management of revenue and expenses with the person's business;

6 (I) does not work as part of a team of individuals or entities
 7 on a singular task, such as painting a building or installing a roof, where
 8 the work performed by the person cannot be clearly isolated form the
 9 work performed by other individuals or entities;

10 (J) hires, pays, controls, and fires any employees required
 11 to perform the work for which the person was hired; and

12 (K) maintains a business location separate from the
 13 location of the individual for whom or the entity for which services are
 14 performed.

15 * **Sec. 32.** AS 23.30.240 is repealed and reenacted to read:

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

18 (a) Except as provided in (b) of this section, an executive officer elected or appointed
 19 and empowered in accordance with the charter and bylaws of a corporation, or a
 20 member of a limited liability company organized under AS 10.50, is not an employee
 21 of the business entity under this chapter if the executive officer or member owns at
 22 least 10 percent of the business entity. Except as provided in (b) of this section, an
 23 executive officer of a municipal corporation or of a charitable, religious, educational,
 24 or other nonprofit corporation is not an employee of the corporation under this
 25 chapter.

26 (b) Any type of corporation or limited liability company may bring an
 27 executive officer, or a member exempted under (a) of this section, within the coverage
 28 of the business entity's insurance contract by specifically including the executive
 29 officer or member in the contract of insurance. The election to bring the executive
 30 officer or member within the business entity's coverage continues in force for the
 31 period the contract of insurance is in effect. During that period, an executive officer or

1 a member brought within the coverage of the insurance contract is an employee of the
2 business entity under this chapter.

3 * **Sec. 33.** AS 23.30.247(c) is amended to read:

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

11 * **Sec. 34.** AS 23.30.250(a) is amended to read:

12 (a) A person who (1) knowingly makes a false or misleading statement,
13 representation, or submission, **or knowingly fails to report a material fact** related to
14 a benefit under this chapter; (2) knowingly assists, abets, solicits, or conspires in
15 making a false or misleading submission affecting the payment, coverage, or other
16 benefit under this chapter; (3) knowingly misclassifies employees or engages in
17 deceptive leasing practices for the purpose of evading full payment of workers'
18 compensation insurance premiums; or (4) employs or contracts with a person or firm
19 to coerce or encourage an individual to file a fraudulent compensation claim is civilly
20 liable to a person adversely affected by the conduct, is guilty of theft by deception as
21 defined in AS 11.46.180, and may be punished as provided by AS 11.46.120 -
22 11.46.150. **The division may assess a civil penalty as provided in AS 23.30.080**
23 **against an employer that misclassifies employees or engages in deceptive leasing**
24 **practices.**

25 * **Sec. 35.** AS 23.30.250(b) is amended to read:

26 (b) If the board, after a hearing, finds that a person has obtained compensation,
27 medical treatment, or another benefit provided under this chapter, or that a provider
28 has received a payment, by knowingly making a false or misleading statement or
29 representation, **or knowingly failing to report a material fact** [FOR THE PURPOSE
30 OF OBTAINING THAT BENEFIT], the board shall order that person to make full
31 reimbursement of the cost of all benefits obtained. Upon entry of an order authorized

1 under this subsection, the board shall also order that person to pay all reasonable costs
 2 and attorney fees incurred by the employer and the employer's carrier in obtaining an
 3 order under this section and in defending any claim made for benefits under this
 4 chapter. If a person fails to comply with an order of the board requiring reimbursement
 5 of compensation and payment of costs and attorney fees, the employer may declare the
 6 person in default and proceed to collect any sum due as provided under
 7 AS 23.30.170(b) and (c).

8 * **Sec. 36.** AS 23.30.250 is amended by adding new subsections to read:

9 (d) While receiving compensation provided under this chapter, an employee
 10 shall inform the employer or insurer of the employee's receipt of any unemployment
 11 or disability benefits other than the compensation provided under this chapter, and
 12 shall report any employment other than work for the employer providing the
 13 compensation under this chapter. An employee knowingly fails to report a material
 14 fact under (a) and (b) of this section if the employee does not disclose the receipt of
 15 unemployment or other disability benefits, or other employment, and the employee
 16 knowingly receives compensation under this chapter that the employee is not entitled
 17 to because of the receipt of the other benefits or other employment. In this subsection,
 18 "employment" means any type of work, whether paid or unpaid.

19 (e) An employer misclassifies employees or engages in deceptive leasing
 20 practices under (a) of this section if, for the purpose of evading full payment of
 21 workers' compensation insurance premiums, the employer knowingly falsifies or
 22 misrepresents the

23 (1) job duties of employees;

24 (2) payments made to employees, including concealing payment by not
 25 reporting or underreporting wages or payments made in kind;

26 (3) true identity of the employer;

27 (4) nature of the employer's business;

28 (5) the employer's history of injuries or deaths covered under this
 29 chapter; or

30 (6) number of employees, including by misclassifying a worker as an
 31 independent contractor or as a nonemployee when that worker is an employee covered

1 under this chapter as provided in AS 23.30.230, 23.30.239, 23.30.240, or 23.30.395.

2 * **Sec. 37.** AS 23.30.255(a) is amended to read:

3 (a) An employer required to secure the payment of compensation under this
 4 chapter who fails to do so is guilty of a class B felony if the amount involved exceeds
 5 \$25,000 or a class C felony if the amount involved is \$25,000 or less. If the employer
 6 is a **limited liability company, limited liability partnership, or** corporation, **the**
 7 **members or partners who have at least a 10 percent ownership interest in the**
 8 **business entity, or the corporate executive officers** [ITS PRESIDENT,
 9 SECRETARY, AND TREASURER] are also severally liable to the fine or
 10 imprisonment imposed for the failure of the **business entity** [CORPORATION] to
 11 secure the payment of compensation. [THE PRESIDENT, SECRETARY, AND
 12 TREASURER, ARE SEVERALLY PERSONALLY LIABLE, JOINTLY WITH THE
 13 CORPORATION, FOR THE COMPENSATION OR OTHER BENEFIT WHICH
 14 ACCRUES UNDER THIS CHAPTER IN RESPECT TO AN INJURY WHICH
 15 HAPPENS TO AN EMPLOYEE OF THE CORPORATION WHILE IT HAS
 16 FAILED TO SECURE THE PAYMENT OF COMPENSATION AS REQUIRED BY
 17 AS 23.30.075.]

18 * **Sec. 38.** AS 23.30.255(b) is amended to read:

19 (b) An employer who knowingly transfers, sells, encumbers, assigns, or in any
 20 manner disposes of, conceals, secretes, or destroys any property after one of the
 21 employer's employees has been injured within the scope of this chapter, with intent to
 22 avoid the payment of compensation under this chapter to the employee or the
 23 employee's dependents, is guilty of a class B felony if the amount involved exceeds
 24 \$25,000 or a class C felony if the amount involved is \$25,000 or less. If the employer
 25 is a **limited liability company, limited liability partnership, or** corporation, **the**
 26 **members or partners who have at least a 10 percent ownership interest, or the**
 27 **corporate executive officers** [ITS PRESIDENT, SECRETARY, AND
 28 TREASURER] are also severally liable to the penalty of imprisonment as well as
 29 jointly liable with the **business entity** [CORPORATION] for the fine.

30 * **Sec. 39.** AS 23.30.260 is amended by adding a new subsection to read:

31 (c) Notwithstanding AS 23.30.145 and (a) of this section, approval of a fee is

1 not required if the parties who reach an agreement in regard to a claim for injury or
2 death under this chapter agree to the payment of attorney fees, and the agreement in
3 regard to a claim for injury or death does not require board approval under
4 AS 23.30.012.

5 * **Sec. 40.** AS 23.30.395(19) is repealed and reenacted to read:

6 (19) "employee" means a person who is not an independent contractor
7 as defined in AS 23.30.230 and who, under a contract of hire, express or implied, is in
8 the service of an employer as defined in (20) of this section;

9 * **Sec. 41.** AS 23.30.015(c), 23.30.040, 23.30.205, 23.30.395(35); and AS 37.05.146(c)(12)
10 are repealed.

11 * **Sec. 42.** AS 23.30.040(f), 23.30.080(d), and 23.30.110(h) are repealed.

12 * **Sec. 43.** The uncodified law of the State of Alaska is amended by adding a new section to
13 read:

14 **APPLICABILITY.** (a) AS 23.30.110(c), as repealed and reenacted by sec. 18 of this
15 Act, and AS 23.30.110(h), as repealed in sec. 42 of this Act, apply to claims filed on or after
16 the effective date of this Act. Claims pending on the effective date of this Act shall be
17 continued and completed under AS 23.30.110(c) and 23.30.110(h), as those statutes read on
18 the day before the effective date of this Act.

19 (b) Notwithstanding AS 23.30.075(b), as amended by sec. 9 of this Act, AS 23.30.080
20 as amended by secs. 10, 11, 12 and 13 of this Act, and AS 23.30.080(d), as repealed by sec.
21 42 of this Act, the division of workers' compensation's petitions against employers for a
22 failure to insure for workers' compensation liability that are pending before Workers'
23 Compensation Board before the effective date of this Act shall be continued and completed
24 under AS 23.30.075(b) and AS 23.30.080, as those statutes read on the day before the
25 effective date of this Act.

26 * **Sec. 44.** The uncodified law of the State of Alaska is amended by adding a new section to
27 read:

28 **TRANSITION: IMPLEMENTATION OF REPEAL OF SECOND INJURY FUND.**
29 The balance of the second injury fund created by former AS 23.30.040 shall be transferred to
30 the general fund on the effective date of this section.

31 * **Sec. 45.** The uncodified law of the State of Alaska is amended by adding a new section to

1 read:

2 TRANSITION: REGULATIONS. The Department of Labor and Workforce
3 Development and the Workers' Compensation Board may adopt regulations to implement this
4 Act. The regulations take effect under AS 44.62 (Administrative Procedure Act), but not
5 before the effective date of the law implemented by the regulation.

6 * **Sec. 46.** The uncodified law of the State of Alaska is amended by adding a new section to
7 read:

8 CONDITIONAL EFFECT NOTIFICATION (a). Sections 2, 4, 33, 41, and 44 of this
9 Act take effect only if the commissioner of labor and workforce development notifies the
10 revisor of statutes and the lieutenant governor in writing as required under (b) of this section.

11 (b) The commissioner of labor and workforce development shall notify the revisor of
12 statutes and the lieutenant governor in writing of the date that all liability for previously
13 accepted claims to the second injury fund under AS 23.30.205, and claims ordered to be paid
14 from that fund, have been satisfied.

15 * **Sec. 47.** If, under sec. 46 of this Act, secs. 2, 4, 33, 41, and 44 of this Act take effect, they
16 take effect on the day after the commissioner of labor and workforce development makes the
17 notification required under sec. 46 of this Act.

18 * **Sec. 48.** Sec. 45 of this Act takes effect immediately under AS 01.10.070(c).