

HOUSE BILL NO. 30

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-FIRST LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE JOSEPHSON

Introduced: 1/11/19

Referred: Prefiled

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the exclusiveness of liability of an employer in the case of death;**
2 **relating to the payment of workers' compensation benefits in the case of permanent**
3 **partial impairment; relating to notice of workers' compensation death benefits; relating**
4 **to the payment of workers' compensation death benefits payable to a child of an**
5 **employee where there is no surviving spouse; relating to the payment of workers'**
6 **compensation death benefits for an employee without a surviving spouse or child; and**
7 **providing for an effective date."**

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

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

11 SHORT TITLE. This Act may be known as the Abigail Caudle Act.

12 *** Sec. 2.** AS 23.30.055 is repealed and reenacted to read:

13 **Sec. 23.30.055. Exclusiveness of liability.** (a) 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.

(b) Notwithstanding (a) of this section, 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, if

(1) an employer fails to secure payment of compensation as required by this chapter; or

(2) the injury to the employee results in death caused by the employer's wilful disregard for the life, limb, health, or bodily safety of the employee.

(c) In an action under (b) of this section, 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.

(d) 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.

* **Sec. 3.** AS 23.30.190(a) is amended to read:

(a) In case of impairment partial in character but permanent in quality, and not resulting in permanent total disability, the compensation is \$255,506 [\$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.

1 * **Sec. 4.** AS 23.30.190 is amended by adding a new subsection to read:

2 (e) The director shall annually increase the amount payable under (a) of this
3 section by a percentage equal to the percentage increase in the Consumer Price Index
4 for urban wage earners and clerical workers for Anchorage, Alaska, during the
5 previous calendar year, as determined by the United States Department of Labor,
6 Bureau of Labor Statistics.

7 * **Sec. 5.** AS 23.30 is amended by adding a new section to read:

8 **Sec. 23.30.212. Notice of death benefits.** (a) If an injury causes death, on a
9 form prescribed by the director, the employer shall notify the personal representative
10 of the employee's estate of the compensation for death available under AS 23.30.215,
11 the statute of limitations for obtaining workers' compensation benefits, and where to
12 obtain a list of legal counsel and grief counselors who may be able to assist.

13 (b) If the identity of the personal representative of the employee's estate is not
14 known by the employer, the employer shall notify one of the following:

- 15 (1) the employee's surviving spouse;
- 16 (2) the employee's mother or father;
- 17 (3) the employee's dependent;
- 18 (4) the employee's next of kin; or
- 19 (5) anyone otherwise entitled to recover death benefits under
20 AS 23.30.215.

21 (c) In this section, "personal representative" has the meaning given in
22 AS 13.06.050.

23 * **Sec. 6.** AS 23.30.215(a) is amended to read:

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

- 26 (1) reasonable and necessary funeral expenses not exceeding \$10,000;
- 27 (2) if there is a widow or widower or a child or children of the
28 deceased, the following percentages of the spendable weekly wages of the deceased:
29 (A) 80 percent for the widow or widower with no children;
30 (B) 50 percent for the widow or widower with one child and 40
31 percent for the child;

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

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

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

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

11 (4) if there is no widow or widower or child or children, then for the
 12 support of father, mother, grandchildren, brothers, and sisters, if dependent on
 13 [UPON] the deceased at the time of injury, 42 percent of the spendable weekly wage
 14 of the deceased to those [SUCH] beneficiaries, share and share alike, not to exceed
 15 \$100,000 [\$20,000] in the aggregate;

16 (5) \$5,000 to a surviving widow or widower, or equally divided among
 17 surviving children of the deceased if there is no widow or widower; and

18 (6) if there is no widow or widower or child or children, and the
 19 father, mother, grandchildren, brothers, and sisters were not dependent on the
 20 deceased at the time of injury, then the following amounts are payable in a lump
 21 sum:

22 (A) \$120,000 to the surviving parent, if there is only one
 23 surviving parent;

24 (B) \$60,000 to each surviving parent, if there are two
 25 surviving parents;

26 (C) \$120,000 divided equally among each surviving parent,
 27 if there are more than two surviving parents; or

28 (D) \$120,000 to the estate of the decedent, if there are no
 29 surviving parents.

30 * Sec. 7. AS 23.30.215 is amended by adding a new subsection to read:

31 (j) The death benefit payable to a person who is a child under (a)(2)(D) or (E)

1 of this section shall terminate five years after the person is no longer considered a
2 child under AS 23.30.395(8).

3 * **Sec. 8.** This Act takes effect January 1, 2020.