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Governor Bill Walker
STATE OF ALASKA

January 24, 2017

The Honorable Pete Kelly
President of the Senate
Alaska State Legislature
State Capitol Room 111
Juneau, AK 99801

Dear President Kelly:

Under the authority of Article III, Section 18, of the Alaska Constitution, I am transmitting a bill relating to the workers' compensation system. The bill proposes improvements to increase the efficiency and flexibility of the current system for the benefit of injured workers and employers, including improving the delivery of benefits to injured employees, deterring workers' compensation fraud, ensuring compliance with the requirement that employers insure for workers' compensation liability, and providing adequate funding for the administration of the system.

The Legislature has consistently endeavored to create a workers' compensation system that delivers benefits quickly, efficiently, fairly, and predictably to injured workers at a reasonable cost to employers. Yet the system has not been significantly reformed in more than 10 years. The improvements in this bill address rising costs, recent legal developments, and new approaches to improve the system's efficiency and fairness.

First, the bill would speed up dispute resolution before the Workers' Compensation Board (Board), providing closure for both injured workers and their employers. The bill simplifies the process by requiring a hearing shortly after a claim is filed, rather than waiting for an employee to request a hearing, and by ending the practice of permitting non-attorneys to represent parties before the Board. The bill also simplifies settlement agreements by eliminating a requirement that the Board approve attorney fees as part of a settlement when fees are the sole issue in the settlement that requires Board approval. Finally, the process of imposing civil penalties against uninsured employers is streamlined. The bill permits the Division of Workers' Compensation to assess the civil penalty directly, rather than petitioning the Board to set the penalty. An employer who disputes the assessed penalty may challenge the assessment before the board.

Second, to speed up the delivery of medical care to injured workers and reduce confusion for employers as a result of the Supreme Court's decision in *M-K Rivers v. Harris,* 325 P.3d 510 (2014), the bill adds provisions requiring employers to authorize or deny medical treatment upon a medical provider's written request, and provides a reasonable timeframe for an employer to respond without incurring a penalty. The Alaska Supreme Court held in *M-K Rivers* that an employer could

be subject to a penalty for unfairly controverting a prescribed medical treatment, even though no bill for the treatment had been presented to the employer for payment. This has resulted in questions over when medical treatment must be preauthorized.

Third, the bill strengthens provisions to prevent workers' compensation fraud by employers and employees. The bill defines when an employer's misclassification of employees or deceptive leasing practices amounts to fraud under the Alaska Workers' Compensation Act. In response to the Supreme Court's decision in *Shehata v. Salvation Army,* 225 P.3d 1106 (Alaska 2010), the bill also imposes an affirmative duty on employees receiving workers' compensation benefits to report work and receipt of other types of wage-loss replacement benefits. These provisions will deter fraudulent conduct by employees that results in the unlawful receipt of workers' compensation benefits, or conduct by employers that results in artificially low workers' compensation premiums.

Fourth, the bill makes a number of substantive changes to the assessment of civil penalties against employers who fail to insure for workers' compensation. Among other changes, the Division of Workers' Compensation's ability to assess a civil penalty is expanded to include employers who are underinsured because they have misclassified workers in a variety of ways as not subject to workers' compensation coverage, misrepresented the nature of their business, or engaged in deceptive leasing practices. Provisions in the bill would expand personal liability for workers' compensation benefits and civil penalties for failure to insure to owners of more types of employing business entities. Most significantly, the bill changes the calculation and maximum civil penalty for a failure to insure for workers' compensation liability. The current maximum penalty of $1,000 for each uninsured employee workday has led to two unintended consequences. The calculation results in astronomically high penalties that do not withstand review on appeal and that increase litigation costs and employer defaults. In addition, uninsured employers that have not maintained required records frequently are penalized less severely than similar employers that have kept records because of the difficulty of establishing the number of uninsured employee workdays without records. To correct these issues, the bill sets a maximum penalty of three times the workers' compensation insurance premium that the employer would have paid if the employer had properly insured its employees. This calculation is easier because it requires only the employer's overall payroll data and the Division of Insurance's assigned risk rates for the nature of the employer's business. The new penalty will result in a reasonable deterrent that takes into account the employer's size, the nature of the employer's business, and the financial gain the employer realized by operating without paying, in full or in part, for workers' compensation insurance.

Fifth, the bill reduces administrative costs. The bill allows employers to pay benefits electronically, both delivering benefits to workers faster and saving costs. The bill also allows the Division of Workers' Compensation to mandate electronic filing of certain reports from employers and insurers, and eliminates a requirement that corporate executive officers seek the division's approval before opting out of workers' compensation coverage for themselves. The bill adds medical publications to a list the Department of Labor and Workforce Development may incorporate, including future amended versions, into regulation. In addition, the bill provides a penalty for insurers and employers that fail to timely submit proof of coverage in order to reduce the Division's wasted efforts investigating insured employers that neglected to report insurance

coverage. The bill also phases out the second injury fund, saving administrative costs for the Department and reducing costs for employers, which are required to contribute to the fund. The fund's purpose is to encourage employers to hire or retain disabled individuals, but the fund is no longer necessary with the passage of laws barring employment discrimination on the basis of disability. Under the bill, the fund would not accept new claims and would be phased out as current claims are paid. Employers' required contributions to the fund would gradually drop to zero as the claims are paid.

Finally, the bill would ensure adequate funding for the administration of the workers' compensation and workers' safety programs by allowing the Department of Labor and Workforce Development to receive a greater percentage of the annual service fees that insurers pay to the Division of Insurance. The bill does not increase the service fee for workers' compensation insurers or employers, but allocates more of the insurers' annual service fee to the Department.

In the spirit of streamlining government processes and protecting citizen rights, the bill would speed up resolution of disputes, improve delivery of benefits to injured employees, strengthen fraud prosecution and employers' compliance with the requirement to insure employees for workers' compensation liability, and reduce administrative costs.

I urge your prompt and favorable action on this measure.

Sincerely,

Bill Walker
Governor

Enclosure