

SENATE BILL NO. 29

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTIETH LEGISLATURE - FIRST SESSION

BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 1/20/17

Referred: Labor and Commerce, Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act repealing the Workers' Compensation Appeals Commission; relating to
2 decisions and orders of the Workers' Compensation Appeals Commission; relating to
3 superior court jurisdiction over appeals from Alaska Workers' Compensation Board
4 decisions; repealing Rules 201.1, 401.1, and 501.1, Alaska Rules of Appellate Procedure,
5 and amending Rules 202(a), 204(a) - (c), 210(e), 601(b), and 603(a), Alaska Rules of
6 Appellate Procedure; and providing for an effective date."

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

8 * **Section 1.** AS 23.30.005 is amended by adding a new subsection to read:

9 (n) The board, in its administrative capacity, shall make available, upon
10 request, the decisions and orders of the former Workers' Compensation Appeals
11 Commission. Unless reversed or modified by a court, decisions of the former Workers'
12 Compensation Appeals Commission have the force of legal precedent and shall stand
13 instead of the order of the board from which review was taken.

1 *** Sec. 2.** AS 23.30.107(b) is amended to read:

2 (b) Medical or rehabilitation records, and the employee's name, address, social
3 security number, electronic mail address, and telephone number contained on any
4 record, in an employee's file maintained by the division or held by the board [OR THE
5 COMMISSION] are not public records subject to public inspection and copying under
6 AS 40.25.100 - 40.25.295. This subsection does not prohibit

7 (1) the reemployment benefits administrator, the division, the board,
8 [THE COMMISSION,] or the department from releasing medical or rehabilitation
9 records in an employee's file, without the employee's consent, to a physician providing
10 medical services under AS 23.30.095(k) or 23.30.110(g), a party to a claim filed by
11 the employee, or a governmental agency; or

12 (2) the quoting or discussing of medical or rehabilitation records
13 contained in an employee's file during a hearing on a claim for compensation or in a
14 decision or order of the board [OR COMMISSION].

15 *** Sec. 3.** AS 23.30.108(d) is amended to read:

16 (d) If the employee files a petition seeking a protective order to recover
17 medical and rehabilitation information that has been provided but is not related to the
18 employee's injury, and the board or the board's designee grants the protective order,
19 the board or the board's designee granting the protective order shall direct the division,
20 the board, [THE COMMISSION,] and the parties to return to the employee, as soon as
21 practicable following the issuance of the protective order, all medical and
22 rehabilitation information, including copies, in their possession that is unrelated to the
23 employee's injury under the protective order.

24 *** Sec. 4.** AS 23.30.108(e) is amended to read:

25 (e) If the board or the board's designee limits the medical or rehabilitation
26 information that may be used by the parties to a claim, either by an order on the record
27 or by issuing a written order, the division, the board, [THE COMMISSION,] and a
28 party to the claim may request and an employee shall provide or authorize the
29 production of medical or rehabilitation information only to the extent of the limitations
30 of the order. If information has been produced that is outside of the limits designated
31 in the order, the board or the board's designee shall direct the party in possession of

the information to return the information to the employee as soon as practicable following the issuance of the order.

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

Sec. 23.30.126. Review of a board decision and order. (a) A decision and order of the board becomes effective when filed in the office of the board under AS 23.30.110. A decision and order of the board becomes final and is not subject to further review, unless the board on its own motion reconsiders the decision and order under AS 44.62.540, or modifies the decision and order under AS 23.30.130, or a party seeks review of the decision and order by filing a

(1) petition for reconsideration with the board under AS 44.62.540;

(2) notice of appeal with the superior court under AS 44.62.560;

(3) petition for review with the superior court under the rules for appellate procedure; or

(4) petition for modification under AS 23.30.130.

(b) A decision and order is not stayed pending judicial review unless a party applies for a stay and files a supersedeas bond, if required, in conformance with the rules of appellate procedure, and the court orders a stay, in whole or in part. To stay continuing future periodic compensation payments, the party applying for the stay must show irreparable harm and the existence of the probability of the merits of the appeal being decided adversely to the recipient of the compensation payments. To stay a lump sum compensation payment, the party applying for the stay must show irreparable harm and the existence of serious and substantial questions going to the merits of the case.

(c) The board's findings regarding the credibility of the testimony of a witness before the board are binding on the court as provided in AS 23.30.122. A finding of fact made by the board as part of a decision and order shall be conclusive for a reviewing court if supported by substantial evidence in light of the whole record. To the extent that it does not conflict with the provisions of this chapter, AS 44.62.570 applies to judicial review.

(d) The director may intervene in an appeal or petition for review. If a party is not represented by an attorney and a compensation order concerns an unsettled

question of law, the director may file an appeal or petition for review to obtain a ruling.

* **Sec. 6.** AS 23.30.155 is amended by adding a new subsection to read:

(r) 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 is had as provided in AS 23.30.126, and a court orders a stay of payments. The additional amount shall be paid directly to the recipient to whom the unpaid compensation was to be paid.

* **Sec. 7.** AS 39.50.200(b)(31) is amended to read:

(31) Workers' Compensation Board (AS 23.30.005) [AND WORKERS' COMPENSATION APPEALS COMMISSION (AS 23.30.007)];

* **Sec. 8.** The uncoded law of the State of Alaska is amended by adding a new section to read:

DIRECT COURT RULE AMENDMENT. Rule 204(c)(2), Alaska Rules of Appellate Procedure, is amended to read:

(2) Notwithstanding subparagraph (1), a bond for costs on appeal shall not be required in an appeal from a decision of the trial court in any criminal case or any civil case where an indigent party is entitled to court-appointed counsel, and a bond shall not be required from an employee appealing from a denial of compensation by the Alaska Workers' Compensation Board [APPEALS COMMISSION] or from a denial of a claim for benefits under AS 23.20 (Employment Security Act).

* **Sec. 9.** Rules 201.1, 401.1, and 501.1, Alaska Rules of Appellate Procedure, are repealed.

* **Sec. 10.** AS 23.30.007, 23.30.008, 23.30.009, 23.30.125, 23.30.127, 23.30.128, 23.30.129, 23.30.155(f), 23.30.395(10); AS 39.25.110(40); AS 44.64.020(a)(12), and 44.64.020(a)(13) are repealed.

* **Sec. 11.** The uncoded law of the State of Alaska is amended by adding a new section to read:

INDIRECT COURT RULE AMENDMENTS. (a) The repeal of AS 23.30.129 in sec. 10 of this Act, has the effect of amending 202(a), Alaska Rules of Appellate Procedure by

1 removing the need for provisions in that rule governing appeals from the Workers'
2 Compensation Appeals Commission to the supreme court after that commission is dissolved.

3 (b) The repeal of AS 23.30.128 in sec. 10 of this Act has the effect of amending Rule
4 204(a)(1), Alaska Rules of Appellate Procedure, by removing the need for the provisions in
5 that rule governing the time period for appeals from the Workers' Compensation Appeals
6 Commission under AS 23.30.128(g) after that commission is dissolved and the time period
7 for filing any appeal from a final decision of that commission has run.

8 (c) The repeal of AS 23.30.128 and 23.30.129 in sec. 10 of this Act has the effect of
9 amending Rule 204(a)(3), Alaska Rules of Appellate Procedure, by removing the need for
10 provisions on motions that terminate the time for filing appeals of the Workers' Compensation
11 Appeals Commission after that commission is dissolved.

12 (d) The repeal of AS 23.30.008 in sec. 10 of this Act has the effect of amending Rule
13 204(a)(5), Alaska Rules of Appellate Procedure by removing the need to reference
14 AS 23.30.008(d) after that commission is dissolved.

15 (e) The repeal of AS 23.30.129 in sec. 10 of this Act has the effect of amending Rule
16 204(b)(5), Alaska Rules of Appellate Procedure, by necessitating a change in the name of the
17 administrative agency that issued the final administrative denial of workers' compensation
18 benefits from the Workers' Compensation Appeals Commission to the Alaska Workers'
19 Compensation Board after the Workers' Compensation Appeals Commission is dissolved and
20 the time period for filing any appeal from a final decision of that commission has run.

21 (f) The repeal of AS 23.30.007, 23.30.008, 23.30.009, 23.30.125, 23.30.127,
22 23.30.128, and 23.30.129 in sec. 10 of this Act has the effect of amending Rule 210(e)(1),
23 Alaska Rules of Appellate Procedure, by removing the need to reference preparation of the
24 record on appeal from a final decision of the Workers' Compensation Appeals Commission
25 after that commission is dissolved and the records on any appeals from final decisions of that
26 commission have been transmitted to the supreme court.

27 (g) The repeal of AS 23.30.129 in sec. 10 of this Act has the effect of amending Rule
28 601(b), Alaska Rules of Appellate Procedure, by removing the need to reference that an
29 appeal from the Workers' Compensation Appeals Commission shall be taken to the supreme
30 court under AS 23.30.129 after the Workers' Compensation Appeals Commission is dissolved
31 and any appeal from a final decision of that commission has been timely filed with the

1 supreme court.

2 (h) AS 23.30.126, added by sec. 5 of this Act, has the effect of amending Rule 603(a),
3 Alaska Rules of Appellate Procedure, by establishing a standard for seeking a stay of
4 compensation payments in an appeal filed in the superior court from a final decision of the
5 Alaska Workers' Compensation Board.

6 * **Sec. 12.** The uncoded law of the State of Alaska is amended by adding a new section to
7 read:

8 CONDITIONAL EFFECT. This Act takes effect only if secs. 8, 9, and 11 of this Act,
9 receive the two-thirds majority vote of each house required by art. IV, sec. 15, Constitution of
10 the State of Alaska.

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

13 APPLICABILITY. Before December 2, 2017, AS 23.30.005, 23.30.007, 23.30.008,
14 23.30.009, 23.30.107(b), 23.30.108(d), 23.30.108(e), 23.30.125, 23.30.127, 23.30.128,
15 23.30.129, 23.30.155(f), 23.30.395(10); AS 39.25.110(40); AS 39.50.200(b)(31); and
16 AS 44.64.020(a)(12) and (13), as those statutes read on the day before the effective date of
17 this Act, continue to apply to appeals, petitions for review, and other proceedings pending
18 before the Workers' Compensation Appeals Commission. Appeals, petitions for review, and
19 other proceedings under this subsection shall be continued in the Workers' Compensation
20 Appeals Commission through December 1, 2017. AS 23.30.126, added by sec. 5 of this Act,
21 and AS 23.30.155(r), added by sec. 6 of this Act, do not apply to appeals, petitions for review,
22 or other proceedings under this subsection. AS 23.30.129, as it read on the day before the
23 effective date of this Act, shall apply to appeals to the state supreme court from final decisions
24 of the Workers' Compensation Appeals Commission issued on or before December 1, 2017,
25 and to petitions for review from interlocutory decisions of the Workers' Compensation
26 Appeals Commission issued on or before December 1, 2017.

27 * **Sec. 14.** The uncoded law of the State of Alaska is amended by adding a new section to
28 read:

29 TRANSITIONAL PROVISIONS. (a) Appeals, petitions for review, and other
30 proceedings that seek review of Workers' Compensation Board decisions and orders, and that
31 have not been filed before the Workers' Compensation Appeals Commission on or before

1 May 31, 2017, must be filed in the superior court on or after June 1, 2017, in accordance with
2 AS 23.30.126, added by sec. 5 of this Act, and the filing deadlines in AS 44.62.560 and Rule
3 602(a)(2), Alaska Rules of Appellate Procedure.

4 (b) A party who seeks review of a final Workers' Compensation Appeals Commission
5 decision issued on or before December 1, 2017, shall file an appeal to the state supreme court
6 under AS 23.30.129, and the rules of appellate procedure, as that statute and those rules read
7 on the day before the effective date of this Act. A party who seeks review of an interlocutory
8 Workers' Compensation Appeals Commission decision issued on or before December 1,
9 2017, shall file a petition for review with the state supreme court under AS 23.30.129, and the
10 rules of appellate procedure, as that statute and those rules read on the day before the effective
11 date of this Act. Cases in which a party seeks review of a final Workers' Compensation Board
12 decision and order issued after a remand from the Workers' Compensation Appeals
13 Commission must be filed in the superior court on or after June 1, 2017, in accordance with
14 AS 23.30.126, added by sec. 5 of this Act.

15 (c) The Workers' Compensation Appeals Commission's power to order
16 reconsideration under AS 23.30.128(f), as that section read on the date before the effective
17 date of this Act, expires on December 2, 2017. Requests for reconsideration pending before
18 the Workers' Compensation Appeals Commission shall be automatically denied on
19 December 2, 2017, and, notwithstanding AS 23.30.128(g), as that section read on the day
20 before the effective date of this Act, the decision of the Workers' Compensation Appeals
21 Commission becomes final on December 2, 2017. If the Workers' Compensation Appeals
22 Commission ordered reconsideration but did not issue a decision on reconsideration on or
23 before December 1, 2017, reconsideration shall be automatically denied on December 2,
24 2017, and, notwithstanding AS 23.30.128(g), as that section read on the day before the
25 effective date of this Act, the original decision of the Workers' Compensation Appeals
26 Commission becomes final on December 2, 2017. A party whose request for reconsideration
27 was denied under this subsection and who seeks further review must file an appeal in the
28 supreme court under AS 23.30.129, as it read on the day before the effective date of this Act,
29 and in accordance with the rules of appellate procedure.

30 (d) On December 2, 2017, the Workers' Compensation Appeals Commission shall
31 transfer the files of all appeals, petitions for review, and other proceedings that were pending

1 before June 1, 2017 and were not completed on or before December 1, 2017, to superior
2 court, which will assume jurisdiction under AS 22.10.020, and Rules 604(b) and 609, Alaska
3 Rules of Appellate Procedure. The Workers' Compensation Appeals Commission shall
4 provide notice to all parties of record 30 days before it transfers a pending case, advising
5 parties of the transfer of jurisdiction and the effective date of the transfer. The Workers'
6 Compensation Appeals Commission shall prepare each record in accordance with Rule
7 604(b), Alaska Rules of Appellate Procedure, and mail or hand deliver the record in the
8 pending case to the superior court in the judicial district where the Workers' Compensation
9 Board issued the contested decision and order. If the superior court determines that the record
10 does not comply with Rule 604(b), Alaska Rules of Appellate Procedure, the court may return
11 the record to the Workers' Compensation Board and direct the Workers' Compensation Board
12 to conform the record as may be necessary.

13 * **Sec. 15.** The uncoded law of the State of Alaska is amended by adding a new section to
14 read:

15 TRANSITION: TERMS OF COMMISSIONERS. Notwithstanding AS 23.30.007(e),
16 the terms of the members appointed to the Workers' Compensation Appeals Commission
17 expire December 31, 2017.

18 * **Sec. 16.** This Act takes effect June 1, 2017.