

HOUSE BILL NO. 214

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-NINTH LEGISLATURE - SECOND SESSION

BY REPRESENTATIVE OLSON

Introduced: 1/19/16

Referred: Labor and Commerce, Judiciary

A BILL

FOR AN ACT ENTITLED

1 **"An Act repealing the Workers' Compensation Appeals Commission; relating to**
2 **decisions and orders of the Alaska Workers' Compensation Board; relating to superior**
3 **court jurisdiction over appeals from Alaska Workers' Compensation Board decisions**
4 **and orders; repealing Rules 201.1, 401.1, and 501.1, Alaska Rules of Appellate**
5 **Procedure, and amending Rules 202(a), 204(a) - (c), 210(e), 508(g), 601(b), 602, and 603,**
6 **Alaska Rules of 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 maintain, index, and make
10 available for public inspection the decisions and orders of the board and the former
11 Workers' Compensation Appeals Commission. Decisions and orders of the former
12 Workers' Compensation Appeals Commission are final and conclusive unless
13 appealed to the Alaska Supreme Court and shall stand instead of the order of the board

1 from which review was taken. Unless reversed by the Alaska Supreme Court,
 2 decisions of the former Workers' Compensation Appeals Commission have the force
 3 of legal precedent.

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

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

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

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

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

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

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

28 (e) If the board or the board's designee limits the medical or rehabilitation
 29 information that may be used by the parties to a claim, either by an order on the record
 30 or by issuing a written order, the division, the board, [THE COMMISSION,] and a
 31 party to the claim may request and an employee shall provide or authorize the

1 production of medical or rehabilitation information only to the extent of the limitations
 2 of the order. If information has been produced that is outside of the limits designated
 3 in the order, the board or the board's designee shall direct the party in possession of
 4 the information to return the information to the employee as soon as practicable
 5 following the issuance of the order.

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

7 **Sec. 23.30.126. Review of board order.** (a) A decision or order of the board
 8 becomes effective when filed in the office of the board under AS 23.30.110 and
 9 becomes final on the 31st day after the decision or order is filed unless, before the 31st
 10 day, a party files a

11 (1) petition for reconsideration with the board under AS 44.62.540;
 12 (2) notice of appeal with the superior court under AS 44.62.560;
 13 (3) petition for review with the superior court under the rules of
 14 appellate procedure; or

15 (4) petition for modification under AS 23.30.130 or the board acts on
 16 its own initiative under AS 23.30.130.

17 (b) A final order is not subject to judicial review or reconsideration but may be
 18 modified under AS 23.30.130.

19 (c) A decision or order is not stayed pending judicial review unless the court
 20 so orders.

21 (d) The board's findings on the credibility of a witness and the weight to be
 22 given the testimony of a witness are binding on a reviewing court under AS 23.30.122.
 23 A finding of fact made by the board as a part of a decision or order shall be conclusive
 24 for a reviewing court if supported by substantial evidence in light of the whole record.
 25 To the extent that it does not conflict with the provisions of this section, AS 44.62.570
 26 applies to judicial review under this chapter.

27 (e) The director may intervene in an appeal under AS 44.62.560 or petition for
 28 review. If a party is not represented by counsel and a compensation order concerns an
 29 unsettled question of law, the director may file an appeal or petition for review to
 30 obtain a ruling.

31 (f) A court shall award a successful party reasonable costs and, if the party is

represented by an attorney, attorney fees that the court determines to be fully compensatory and reasonable. A court may not make an award of costs and attorney fees against an injured worker unless the court finds that the worker's position on judicial review was frivolous or unreasonable or the judicial review was sought in bad faith.

* **Sec. 6.** AS 23.30.155(f) is amended to read:

(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 23.30.126 [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.

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

* **Sec. 9.** AS 23.30.007, 23.30.008, 23.30.009, 23.30.125, 23.30.127, 23.30.128, 23.30.129, 23.30.395(10); AS 39.25.110(40); AS 44.64.020(a)(12), and 44.64.020(a)(13) are repealed.

* **Sec. 10.** The uncoded law of the State of Alaska is amended by adding a new section to read:

INDIRECT COURT RULE AMENDMENTS. The provisions of AS 23.30.126, added by sec. 5 of this Act, and the repeal of AS 23.30.007, 23.30.008, 23.30.125, 23.30.127, 23.30.128, and 23.30.129 in sec. 9 of this Act have the effect of changing Rules 202(a), 204(a) - (c), 210(e), 508(g), 601(b), 602, and 603, Alaska Rules of Appellate Procedure, by repealing the Alaska Workers' Compensation Commission and providing that appeals from the Alaska Workers' Compensation Board be brought in the superior court.

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

TWO-THIRDS VOTE NOT REQUIRED. Because Rules 201.1, 202(a), 204(a) - (c),

210(e), 401.1, 501.1, 508(g), 601(b), 602, and 603, Alaska Rules of Appellate Procedure, were adopted under the Alaska Supreme Court's interpretive authority exercised under art. IV, sec. 1, Constitution of the State of Alaska, secs. 5, 8, and 9 of this Act take effect for purposes of Rules 201.1, 202(a), 204(a) - (c), 210(e), 401.1, 501.1, 508(g), 601(b), 602, and 603, Alaska Rules of Appellate Procedure, without needing to meet the two-thirds vote requirement normally applicable to changing court rules under art. IV, sec. 15, Constitution of the State of Alaska.

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

APPLICABILITY. Before December 2, 2016, AS 23.30.007 - 23.30.009, 23.30.107(b), 23.30.108(d) and (e), 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 39.50.200(b)(31), and AS 44.64.020(a)(12) and (13), as they existed on the day before the effective date of this Act, continue to apply to appeals, petitions for review, and other proceedings pending before the Workers' Compensation Appeals Commission. Appeals, petitions for review, and other proceedings under this section shall be continued in the Workers' Compensation Appeals Commission until December 1, 2016. AS 23.30.126, added by sec. 5 of this Act, and AS 23.30.155(f), as amended by sec. 6 of this Act, do not apply to appeals, petitions for review, or other proceedings under this section. AS 23.30.129, as it read on the day before the effective date of this Act, applies to appeals to the Alaska Supreme Court from final decisions of the Workers' Compensation Appeals Commission issued on or before December 1, 2016.

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

TRANSITIONAL PROVISIONS. (a) Appeals, petitions for review, and other proceedings pending before the Workers' Compensation Appeals Commission before June 1, 2016, and not completed in the Workers' Compensation Appeals Commission before December 2, 2016, shall automatically be transferred to the superior court and placed within the jurisdiction of the superior court on December 2, 2016, under AS 22.10.020 and Rule 609, Alaska Rules of Appellate Procedure.

(b) Appeals, petitions for review, and other proceedings that seek review of Alaska Workers' Compensation Board decisions and that have not been filed and are not pending

1 before the Workers' Compensation Appeals Commission on or before May 31, 2016, must be
2 filed in the superior court on or before June 1, 2016.

3 (c) Before June 1, 2016, a party may file for review by the Workers' Compensation
4 Appeals Commission under AS 23.30.125, 23.30.127, and 23.30.128, as those sections read
5 on the day before the effective date of this Act. On or after June 1, 2016, a party may file for
6 review in the superior court under AS 23.30.126, added by sec. 5 of this Act.

7 (d) Before November 1, 2016, a party or the director may request reconsideration of a
8 Workers' Compensation Appeals Commission decision under AS 23.30.128(f), as that
9 subsection read on the day before the effective date of this Act. On or after November 1,
10 2016, a party seeking review of a Workers' Compensation Appeals Commission decision may
11 only file an appeal or petition for review with the supreme court under AS 23.30.129, as that
12 section read on the day before the effective date of this Act.

13 * **Sec. 14.** The uncodified 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(p),
16 the terms of individuals appointed to the Workers' Compensation Appeals Commission expire
17 February 2, 2017.

18 * **Sec. 15.** This Act takes effect June 1, 2016.