

29-LS0854\E
Wallace
2/24/16

CS FOR HOUSE BILL NO. 214()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-NINTH LEGISLATURE - SECOND SESSION

BY

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVE OLSON

A BILL

FOR AN ACT ENTITLED

"An Act repealing the Workers' Compensation Appeals Commission; relating to decisions and orders of the Alaska Workers' Compensation Board; relating to superior court jurisdiction over appeals from Alaska Workers' Compensation Board decisions and orders; repealing Rules 201.1, 401.1, and 501.1, Alaska Rules of Appellate Procedure, and amending Rules 202(a), 204(a) - (c), 210(e), 508, 601(b), 602, and 603, Alaska Rules of Appellate Procedure; and providing for an effective date."

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

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

(n) The board, in its administrative capacity, shall make available, upon request, the decisions and orders of the former Workers' Compensation Appeals Commission. Decisions and orders of the former Workers' Compensation Appeals Commission are final and conclusive unless appealed to the Alaska Supreme Court and shall stand instead of the order of the board from which review was taken. Unless

reversed by the Alaska Supreme Court, decisions of the former Workers' Compensation Appeals Commission have the force of legal precedent.

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

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

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

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

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

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

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

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

of the order. If information has been produced that is outside of the limits designated 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 board order. (a) A decision or order of the board becomes effective when filed in the office of the board under AS 23.30.110, and, unless proceedings to suspend or set aside the decision or order are instituted under (b) of this section, the decision or order becomes final on the 31st day after it is filed. A party may seek reconsideration before the decision or order becomes final 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 of appellate procedure; or

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

(b) If a compensation order is not in accordance with law or fact, the order may be suspended or set aside, in whole or in part, through proceedings in superior court brought by a party in interest against all other parties to the proceedings before the board. The payment of the amounts required by an award may not be stayed pending a final decision in the proceeding unless, upon application for a stay, the court, on hearing, after not less than three days' notice to the parties in interest, allows the stay of payment, in whole or in part, where the party filing the application would otherwise suffer irreparable damage. Continuing future periodic compensation payments may not be stayed without a showing by the appellant of irreparable damage and the existence of the probability of the merits of the appeal being decided adversely to the recipient of the compensation payments. The order of the court allowing a stay must contain a specific finding, based on evidence submitted to the court and identified by reference to the evidence, that irreparable damage would result to the party applying for a stay and specifying the nature of the damage.

(c) The director may intervene in an appeal under AS 44.62.560 or petition for

review. If a party is not represented by counsel and a compensation order concerns an unsettled question of law, the director may file an appeal or petition for review to obtain a ruling.

(d) 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, 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, and by limiting costs and attorney fees that may be awarded against an injured worker.

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

1 read:

2 APPLICABILITY. Before December 2, 2016, AS 23.30.007 - 23.30.009,
3 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),
4 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
5 they existed on the day before the effective date of this Act, continue to apply to appeals,
6 petitions for review, and other proceedings pending before the Workers' Compensation
7 Appeals Commission. Appeals, petitions for review, and other proceedings under this section
8 shall be continued in the Workers' Compensation Appeals Commission until December 1,
9 2016. AS 23.30.126, added by sec. 5 of this Act, and AS 23.30.155(f), as amended by sec. 6
10 of this Act, do not apply to appeals, petitions for review, or other proceedings under this
11 section. AS 23.30.129, as it read on the day before the effective date of this Act, applies to
12 appeals to the Alaska Supreme Court from final decisions of the Workers' Compensation
13 Appeals Commission issued on or before December 1, 2016.

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

16 TRANSITIONAL PROVISIONS. (a) Appeals, petitions for review, and other
17 proceedings pending before the Workers' Compensation Appeals Commission before June 1,
18 2016, and not completed in the Workers' Compensation Appeals Commission before
19 December 2, 2016, shall automatically be transferred to the superior court in the judicial
20 district where the original claim was filed and placed within the jurisdiction of the superior
21 court on December 2, 2016, under AS 22.10.020 and Rules 604(b) and 609, Alaska Rules of
22 Appellate Procedure.

23 (b) Appeals, petitions for review, and other proceedings that seek review of Alaska
24 Workers' Compensation Board decisions and that have not been filed and are not pending
25 before the Workers' Compensation Appeals Commission on or before May 31, 2016, must be
26 filed in the superior court on or after June 1, 2016.

27 (c) On or after November 1, 2016, a party seeking review of a Workers'
28 Compensation Appeals Commission decision may only file an appeal or petition for review
29 with the supreme court under AS 23.30.129, as that section read on the day before the
30 effective date of this Act.

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

1 read:

2 TRANSITION: TERMS OF COMMISSIONERS. Notwithstanding AS 23.30.007(e),
3 the terms of individuals appointed to the Workers' Compensation Appeals Commission expire
4 December 31, 2016.

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

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

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