

AMENDMENT # 2

OFFERED IN THE SENATE
TO: SB 66

BY SENATOR WIELECHOWSKI

1 Page 1, line 2, following the second occurrence of "compensation;":

2 Insert "**repealing the Workers' Compensation Appeals Commission; relating to**
3 **decisions and orders of the Workers' Compensation Appeals Commission; relating to**
4 **superior court jurisdiction over appeals from Alaska Workers' Compensation Board**
5 **decisions; repealing Rules 201.1, 401.1, and 501.1, Alaska Rules of Appellate Procedure,**
6 **and amending Rules 202(a), 204(a) - (c), 210(e), 601(b), 602(c) and (h), and 603(a),**
7 **Alaska Rules of Appellate Procedure;**"

8
9 Page 4, following line 29:

10 Insert a new bill section to read:

11 **** Sec. 9.** AS 23.30.005 is amended by adding a new subsection to read:

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

17
18 Renumber the following bill sections accordingly.

19
20 Page 4, line 30:

21 Delete "AS 23.30.025"

22 Insert "AS 23.30.025(a)"

23

1 Page 5, following line 9:

2 Insert new bill sections to read:

3 **** Sec. 11.** AS 23.30.107(b) is amended to read:

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

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

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

17 *** Sec. 12.** AS 23.30.108(d) is amended to read:

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

26 *** Sec. 13.** AS 23.30.108(e) is amended to read:

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

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

5 * **Sec. 14.** AS 23.30 is amended by adding a new section to read:

6 **Sec. 23.30.126. Review of a board decision and order.** (a) A decision and
 7 order of the board becomes effective when filed in the office of the board under
 8 AS 23.30.110. A decision and order of the board may be modified under AS 23.30.130
 9 or reconsidered under AS 44.62.540. A party may seek review of a decision and order
 10 of the board by filing with the superior court a notice of appeal under AS 44.62.560 or
 11 a petition for review under the Alaska Rules of Appellate Procedure.

12 (b) A decision and order is not automatically stayed pending judicial review.
 13 A court may order a stay, in whole or in part, if a party

14 (1) applies for a stay;

15 (2) files a supersedeas bond, if required, in conformance with the
 16 Alaska Rules of Appellate Procedure;

17 (3) for a stay involving continuing future periodic compensation
 18 payments, shows irreparable harm and the probability that the appeal will be decided
 19 adversely to the recipient on the merits; and

20 (4) for a stay involving a lump sum compensation payment, shows
 21 irreparable harm and serious and substantial questions regarding the merits of the case.

22 (c) A finding of fact made by the board as part of a decision and order shall be
 23 conclusive for a reviewing court if supported by substantial evidence in light of the
 24 whole record. To the extent that it does not conflict with the provisions of this chapter,
 25 AS 44.62.570 applies to judicial review.

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

30 * **Sec. 15.** AS 23.30.155(f) is amended to read:

31 (f) If compensation payable under the terms of an award is not paid within 14

1 days after it becomes due, there shall be added to that unpaid compensation an amount
 2 equal to 25 percent of the unpaid installment. The additional amount shall be paid at
 3 the same time as, but in addition to, the compensation, unless there is a review of the
 4 compensation order making the award as provided under AS 23.30.126 and a court
 5 orders a stay of payments [AS 23.30.008 AND AN INTERLOCUTORY
 6 INJUNCTION STAYING PAYMENTS IS ALLOWED BY THE COURT]. The
 7 additional amount shall be paid directly to the recipient to whom the unpaid
 8 compensation was to be paid."

9
 10 Renumber the following bill sections accordingly.

11
 12 Page 6, lines 8 - 20:

13 Delete all material and insert:

14 **** Sec. 21.** AS 39.50.200(b)(31) is amended to read:

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

17 *** Sec. 22.** The uncodified law of the State of Alaska is amended by adding a new section to
 18 read:

19 REPEAL OF COURT RULES. Rules 201.1, 401.1, and 501.1, Alaska Rules of
 20 Appellate Procedure, are repealed.

21 *** Sec. 23.** AS 23.30.002, 23.30.007, 23.30.008, 23.30.009, 23.30.125, 23.30.127, 23.30.128,
 22 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
 23 repealed.

24 *** Sec. 24.** The uncodified law of the State of Alaska is amended by adding a new section to
 25 read:

26 INDIRECT COURT RULE AMENDMENTS. (a) The provisions of AS 23.30.126,
 27 added by sec. 14 of this Act, and the repeals of AS 23.30.007, 23.30.008, 23.30.009,
 28 23.30.125, 23.30.127, 23.30.128, and 23.30.129 in sec. 23 of this Act, have the effect of
 29 changing Rules 202(a), 204(a) - (c), 210(e), and 601(b), Alaska Rules of Appellate Procedure,
 30 by repealing the Alaska Workers' Compensation Appeals Commission and providing that
 31 appeals and petitions for review from decisions of the Alaska Workers' Compensation Board

1 be brought in superior court.

2 (b) AS 23.30.126, added by sec. 14 of this Act, has the effect of amending Rules
3 602(c) and (h), Alaska Rules of Appellate Procedure, by permitting the director of the
4 division of workers' compensation to file an appeal or petition for review in the superior court
5 under specified circumstances or intervene in an appeal or petition for review in the superior
6 court.

7 (c) AS 23.30.126, added by sec. 14 of this Act, has the effect of amending Rule
8 603(a), Alaska Rules of Appellate Procedure, by establishing a standard for seeking a stay of
9 compensation payments in an appeal filed in the superior court from a final decision of the
10 Alaska Workers' Compensation Board.

11 * **Sec. 25.** The uncodified law of the State of Alaska is amended by adding a new section to
12 read:

13 APPLICABILITY. (a) AS 23.30.005, 23.30.007, 23.30.008, 23.30.009, 23.30.107(b),
14 23.30.108(d), 23.30.108(e), 23.30.125, 23.30.127, 23.30.128, 23.30.129, 23.30.155(f),
15 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
16 those statutes read on the day before the effective date of this Act, continue to apply to
17 appeals, petitions for review, and other proceedings pending before the Workers'
18 Compensation Appeals Commission on or before December 1, 2019. Appeals, petitions for
19 review, and other proceedings under this subsection shall be continued in the Workers'
20 Compensation Appeals Commission on or before December 1, 2019.

21 (b) AS 23.30.126, added by sec. 14 of this Act, and AS 23.30.155(f), as amended by
22 sec. 15 of this Act, do not apply to appeals, petitions for review, or other proceedings under
23 (a) of this section.

24 (c) AS 23.30.129, as it read on the day before the effective date of this Act, applies to
25 appeals to the supreme court from final decisions of the Workers' Compensation Appeals
26 Commission issued on or before December 1, 2019, and to petitions for review from
27 interlocutory decisions of the Workers' Compensation Appeals Commission issued on or
28 before December 1, 2019.

29 * **Sec. 26.** The uncodified law of the State of Alaska is amended by adding a new section to
30 read:

31 TRANSITION: REVIEW OF DECISIONS OF THE ALASKA WORKERS'

1 COMPENSATION BOARD AND WORKERS' COMPENSATION APPEALS
2 COMMISSION. (a) Appeals, petitions for review, and other proceedings that seek review of
3 decisions and orders of the Alaska Workers' Compensation Board and that have not been filed
4 before the Workers' Compensation Appeals Commission before the effective date of this Act,
5 shall be filed in the superior court on or after June 1, 2019, in accordance with AS 23.30.126,
6 added by sec. 14 of this Act, and the filing deadlines in AS 44.62.560 and Rule 602(a)(2),
7 Alaska Rules of Appellate Procedure.

8 (b) A party seeking review of a final Workers' Compensation Appeals Commission
9 decision issued on or before December 1, 2019, shall file an appeal to the supreme court
10 under AS 23.30.129, and the Alaska Rules of Appellate Procedure, as that statute and those
11 rules read on the day before the effective date of this Act. A party who seeks review of an
12 interlocutory decision of the Workers' Compensation Appeals Commission issued on or
13 before December 1, 2019, shall file a petition for review with the supreme court under
14 AS 23.30.129, and the Alaska Rules of Appellate Procedure, as that statute and those rules
15 read on the day before the effective date of this Act. Cases in which a party seeks review of a
16 final Alaska Workers' Compensation Board decision and order issued after a remand from the
17 Workers' Compensation Appeals Commission must be filed in the superior court on or after
18 June 1, 2019, in accordance with AS 23.30.126, added by sec. 14 of this Act.

19 (c) The power of the Workers' Compensation Appeals Commission to order
20 reconsideration under AS 23.30.128(f), as that section read on the day before the effective
21 date of this Act, expires on December 2, 2019. Requests for reconsideration pending before
22 the Workers' Compensation Appeals Commission shall be automatically denied on
23 December 2, 2019, and, notwithstanding AS 23.30.128(g), as that section read on the day
24 before the effective date of this Act, the decision of the Workers' Compensation Appeals
25 Commission becomes final on December 2, 2019. If the Workers' Compensation Appeals
26 Commission ordered reconsideration but did not issue a decision on reconsideration on or
27 before December 1, 2019, reconsideration shall be automatically denied on December 2,
28 2019, and, notwithstanding AS 23.30.128(g), as that section read on the day before the
29 effective date of this Act, the original decision of the Workers' Compensation Appeals
30 Commission becomes final on December 2, 2019. A party whose request for reconsideration
31 was denied under this subsection and who seeks further review shall file an appeal in the

1 Alaska supreme court under AS 23.30.129, as that section read on the day before the effective
2 date of this Act, and in accordance with the Alaska Rules of Appellate Procedure.

3 (d) On December 2, 2019, the Workers' Compensation Appeals Commission shall
4 transfer the files of all appeals, petitions for review, and other proceedings that were pending
5 before June 1, 2019, and were not completed on or before December 1, 2019, to the superior
6 court, which shall assume jurisdiction under AS 22.10.020, and Rules 604(b) and 609, Alaska
7 Rules of Appellate Procedure. The Workers' Compensation Appeals Commission shall
8 provide notice to all parties of record 30 days before it transfers a pending case, advising
9 parties of the transfer of jurisdiction and the effective date of the transfer. The Workers'
10 Compensation Appeals Commission shall prepare each record in accordance with Rule
11 604(b), Alaska Rules of Appellate Procedure, and mail or hand deliver the record in the
12 pending case to the superior court in the judicial district where the Alaska Workers'
13 Compensation Board issued the contested decision and order. If the superior court determines
14 that the record does not comply with Rule 604(b), Alaska Rules of Appellate Procedure, the
15 court may return the record to the Alaska Workers' Compensation Board and direct the Alaska
16 Workers' Compensation Board to conform the record as may be necessary.

17 * Sec. 27. The uncodified law of the State of Alaska is amended by adding a new section to
18 read:

19 TRANSITION: TERMS OF COMMISSIONERS. Notwithstanding AS 23.30.007(e),
20 as repealed by sec. 23 of this Act, the terms of the members appointed to the Workers'
21 Compensation Appeals Commission expire December 31, 2019.

22 * Sec. 28. The uncodified law of the State of Alaska is amended by adding a new section to
23 read:

24 TRANSITION: MERGER OF DIVISIONS IN THE DEPARTMENT OF LABOR
25 AND WORKFORCE DEVELOPMENT. (a) Notwithstanding the merger of the division of
26 labor standards and safety with the division of workers' compensation in the Department of
27 Labor and Workforce Development under secs. 1 - 8, 10, and 16 - 20 of this Act, all litigation,
28 administrative proceedings, investigations, orders, certificates, regulations, contractual
29 obligations, rights, and liabilities continue in effect, except as provided in secs. 9, 11 - 15, and
30 21 - 27 of this Act.

31 (b) Records, equipment, allocations, and other property of each affected division may

1 be transferred as necessary to implement the changes made by secs. 1 - 8, 10, and 16 - 20 of
2 this Act.

3 * **Sec. 29.** The uncodified law of the State of Alaska is amended by adding a new section to
4 read:

5 **CONDITIONAL EFFECT.** Sections 9, 11 - 15, and 21 - 27 of this Act take effect only
6 if secs. 22 and 24 of this Act receive the two-thirds majority vote of each house required by
7 art. IV, sec. 15, Constitution of the State of Alaska.

8 * **Sec. 30.** If secs. 9, 11 - 15, and 21 - 27 of this Act take effect under sec. 29 of this Act,
9 they take effect June 1, 2019.

10 * **Sec. 31.** Sections 1 - 8, 10, 16 - 20, and 28 of this Act take effect July 1, 2019."