

Print: Ralph Sen 24G-1
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AMENDMENT

#2

OFFERED IN THE SENATE
TO: CSSB 130(FIN)

B. Stevens
G. WILKEN
L. Green
BY B. Stevens

[Handwritten signatures: J. ...]
[Handwritten signature: Cor Bunde]

1 Page 1, line 10, following "proceedings;":

2 Insert "establishing a Workers' Compensation Appeals Commission;";

3

4 Page 2, line 4, following "security;":

5 Insert "providing for appeals from compensation orders;";

6

7 Page 2, line 5, following "proceedings;":

8 Insert "providing for supreme court jurisdiction of appeals from the Workers'
9 Compensation Appeals Commission;";

10

11 Page 5, following line 19:

12 Insert a new bill section to read:

13 **** Sec. 9.** AS 23.30 is amended by adding new sections to read:

14 **Sec. 23.30.007. Workers' Compensation Appeals Commission.** (a) There is
15 established in the Department of Labor and Workforce Development the Workers'
16 Compensation Appeals Commission. The commission has jurisdiction to hear appeals
17 from final decisions and orders of the board under this chapter. Jurisdiction of the
18 commission is limited to administrative appeals arising under this chapter.

19 (b) The commission consists of five members appointed by the governor and
20 confirmed by a majority of the members of the legislature in joint session. The members
21 shall be appointed as follows:

22 (1) a member appointed as chair who meets the requirements of (c)(2) of

1 this section;

2 (2) two members who, because of their employment or affiliations, may
3 be classified as a representative of employees covered by this chapter;

4 (3) two members who, because of their employment or affiliations, may
5 be classified as a representative of employers covered by this chapter.

6 (c) To be eligible for appointment under this section

7 (1) the member must

8 (A) be a citizen of the United States;

9 (B) be a resident of the state for the five years preceding the
10 appointment; and

11 (C) have not been convicted of either a

12 (i) felony; or

13 (ii) misdemeanor related to workers' compensation;

14 (2) the chair must

15 (A) meet the criteria specified in (1) of this subsection;

16 (B) be licensed to practice law in this state and be a member in
17 good standing with the Alaska Bar Association; and

18 (C) have engaged in the active practice of law for at least five
19 years with experience in workers' compensation in this state.

20 (d) A member may act and receive compensation under this section from the date
21 of appointment until confirmation or rejection by the legislature.

22 (e) The term of service on the commission is five years. A member may be
23 reappointed so long as the reappointment complies with the provisions of this section.

24 (f) The chair of the commission is in the exempt service under AS 39.25.110 and
25 shall receive a monthly salary that is not less than Step A nor more than Step F of Range
26 27 of the salary schedule in AS 39.27.011(a) for Anchorage, Alaska.

27 (g) A vacancy arising in the commission shall be filled by appointment by the
28 governor and confirmed by a majority of the members of the legislature in joint session.
29 Except as provided in AS 39.05.080(4), an appointee selected to fill a vacancy shall hold
30 office for the unexpired term of the member whose vacancy is filled. A vacancy in the
31 commission does not impair the authority of a quorum of members to exercise all the

1 powers and perform all the duties of the commission.

2 (h) An appeal to the commission shall be heard and decided by a three-member
3 panel of the commission. An appeal panel shall consist of the chair of the commission
4 and two members of the commission assigned by the chair, one member classified as
5 representing employees, and one member classified as representing employers. At other
6 meetings to conduct commission business, the number of commission members classified
7 as representing employees must equal the number of commission members classified as
8 representing employers. The chair of the commission and two representative members of
9 the commission, one classified as representing employees and one classified as
10 representing employers, constitutes a quorum.

11 (i) A member of the commission may be removed from office by the governor
12 for good cause. To be removed for cause, a member of the commission shall be given a
13 copy of the charges and afforded an opportunity to be heard in person or by counsel in
14 the member's own defense upon not less than 10 days' notice. If the member is removed
15 for cause, the governor shall file with the lieutenant governor a complete statement of all
16 charges made against the member, the governor's findings on the charges, and the record
17 of any proceedings. In this subsection, "good cause" includes

- 18 (1) misconduct in office or violation of AS 39.52;
- 19 (2) conviction of a felony;
- 20 (3) conviction of a misdemeanor related to workers' compensation;
- 21 (4) inability to serve, neglect of duty, incompetence, unjustified failure to
22 handle the caseload assigned, or similar nonfeasance of office; and
- 23 (5) failure to continue to meet the requirements of this section relating to
24 qualification for office.

25 (j) Representative members are entitled to compensation in the amount of \$200 a
26 day for each day spent in actual hearing of appeals or on authorized official business
27 incidental to their duties, and to transportation and per diem as provided by law.
28 Compensation shall be paid pro rata for each portion of a day spent in actual hearing of
29 appeals or on authorized official business.

30 (k) A member of the commission may not hear an appeal under this chapter if
31 (1) a party is an employee or was, in the past seven years, an employee of

1 the commission member or of a business that employs the commission member; this
2 paragraph does not apply to the chair of the commission when the State of Alaska is or
3 was the employer of a party;

4 (2) a party is a member or was, in the past seven years, a member of the
5 same union or employee association as the commission member;

6 (3) a party has a contractual relationship with the commission member, a
7 business that employs the commission member, or a union or employee association of
8 which the commission member is a member;

9 (4) the commission member is unable to be fair, impartial, and unbiased
10 toward the appeal participants; or

11 (5) participation in the appeal is a violation of AS 39.52.

12 (l) If the chair of the commission is unable to hear an appeal for reasons of
13 absence or illness in excess of 10 days, or for reasons set out in (k) of this section, the
14 commissioner of the department shall appoint a person who meets the qualifications of
15 this section to serve as chair to hear the appeal as chair pro tem. The person shall receive
16 the compensation provided in (j) of this section. Appointment of a chair pro tem does not
17 require legislative confirmation.

18 (m) Each member of the commission, before entering upon the duties of office,
19 shall take and subscribe to the oath prescribed for principal officers of the state.

20 (n) The offices of the commission shall be physically separate from the offices of
21 the division.

22 **Sec. 23.30.008. Powers and duties of the commission.** (a) The commission
23 shall be the exclusive and final authority for the hearing and determination of all
24 questions of law and fact arising under this chapter in those matters that have been
25 appealed to the commission, except for an appeal to the Alaska Supreme Court. The
26 commission does not have jurisdiction in any case that does not arise under this chapter
27 or in any criminal case. On any matter taken to the commission, the decision of the
28 commission is final and conclusive, unless appealed to the Alaska Supreme Court, and
29 shall stand in lieu of the order of the board from which the appeal was taken. Unless
30 reversed by the Alaska Supreme Court, decisions of the commission have the force of
31 legal precedent.

1 (b) The commission, in its administrative capacity, shall maintain, index, and
 2 make available for public inspection the final administrative decisions and orders of the
 3 commission and of the board. The chair of the commission may review and circulate
 4 among the other members of the relevant commission appeal panel the drafts of the
 5 panel's formal decisions and decisions upon reconsideration. The drafts are confidential
 6 documents and are not subject to disclosure.

7 (c) The chair of the commission shall draft and propose, and the commission in
 8 its administrative capacity may adopt, regulations implementing the commission's
 9 authority and duties under this chapter, including rules of procedure and evidence for
 10 proceedings before the commission under this chapter. The provisions of AS 44.62
 11 (Administrative Procedure Act) apply to the adoption of regulations by the commission.

12 (d) In an appeal, the commission shall award a successful party reasonable costs
 13 and, if the party is represented by an attorney, attorney fees that the commission
 14 determines to be fully compensatory and reasonable. However, the commission may not
 15 make an award of attorney fees against an injured worker unless the commission finds
 16 that the worker's position on appeal was frivolous or unreasonable or the appeal was
 17 taken in bad faith.

18 (e) The commission, in its administrative capacity, may adopt and alter an
 19 official seal and do all things necessary, convenient, or desirable to carry out the powers
 20 expressly granted or necessarily implied in this chapter.

21 **Sec. 23.30.009. Powers and duties of the chair of the commission.** (a) The
 22 chair of the commission shall exercise general supervision over the office of the
 23 commission and over appeals, and shall direct the administrative functions of the
 24 commission. The chair of the commission shall serve as the executive officer of the
 25 commission and shall have authority in all administrative matters relating to the
 26 members. The chair may

27 (1) employ and supervise commission staff and appoint a commission
 28 clerk;

29 (2) establish and implement a time management system for the
 30 commission members and staff and manage the calendar of appeals;

31 (3) assign the work of the commission members and staff so that appeals

1 are resolved as expeditiously and competently as possible;

2 (4) advise and cooperate with the board to develop appropriate procedures
3 for maintenance and transfer of hearing files and the preservation and transfer of records
4 on appeal; and

5 (5) prepare an annual budget of the commission.

6 (b) The chair of the commission shall preside over hearings and arguments on
7 appeals. The chair of the commission shall ensure that all functions of the commission
8 are performed with due regard for the rights of all parties and consistent with the orderly
9 and prompt resolution of appeals. The chair of the commission shall rule on questions of
10 procedure and advise the representative members of the commission on matters of law.

11 (c) The chair of the commission shall, not later than March 15 of each year, make
12 available to the public and file with the lieutenant governor, a report regarding the
13 commission, including data regarding time periods between initial receipt and final
14 decisions on appeals.

15 (d) The chair of the commission shall devote full time to the duties of the chair of
16 the commission and may not engage in any other employment or business. The chair of
17 the commission may not hold any other office or position under the United States, this
18 state, any municipality or political subdivision of this state, or any tribal government or
19 corporation. The chair of the commission may not hold office or position in a partisan
20 political organization or party."

21

22 Renumber the following bill sections accordingly.

23

24 Page 20, following line 6:

25 Insert new bill sections to read:

26 **** Sec. 32.** AS 23.30.125 is repealed and reenacted to read:

27 **Sec. 23.30.125. Administrative review of compensation order.** (a) A
28 compensation order becomes effective when filed with the office of the board as provided
29 in AS 23.30.110, and, unless proceedings to reconsider, suspend, or set aside the order
30 are instituted as provided in this chapter, the order becomes final on the 31st day after it
31 is filed.

1 (b) Notwithstanding other provisions of law, a decision or order of the board is
2 subject to review by the commission as provided in this chapter.

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

17 (d) Proceedings for reconsidering, suspending, setting aside, or enforcing a
18 compensation order, whether rejecting a claim or making an award, may not be instituted,
19 except as provided in this chapter.

20 * **Sec. 33.** AS 23.30 is amended by adding new sections to read:

21 **Sec. 23.30.127. Appeals to commission.** (a) A party in interest may appeal a
22 compensation order issued by the board to the commission within 30 days after the
23 compensation order is filed with the office of the board under AS 23.30.110. The
24 director may intervene in an appeal. If a party in interest is not represented by counsel
25 and the compensation order concerns an unsettled question of law, the director may file
26 an appeal to obtain a ruling on the question by the commission.

27 (b) An appeal is initiated by filing with the office of the commission

28 (1) a signed notice of appeal specifying the compensation order appealed
29 from;

30 (2) a statement of the grounds upon which the appeal is taken; and

31 (3) other material the commission may by regulation require.

1 (c) A cross-appeal may be initiated by filing with the office of the commission a
2 signed notice of cross-appeal within 30 days after the decision is filed or within 15 days
3 after service of notice of an appeal, whichever is later. The notice of cross-appeal shall
4 specify the compensation order appealed from and the grounds upon which the cross-
5 appeal is taken.

6 (d) The office of the commission may charge a fee, not to exceed \$100, for filing
7 appeals and cross-appeals, except that the office of the commission may not charge a fee
8 if the appellant is the state or a political subdivision of the state. The commission may
9 require an appellant to pay the costs of the transcript of hearing and the preparation of the
10 record on appeal. The commission may require cross-appellants or intervenors to share
11 in the costs.

12 (e) If a request for reconsideration of a board decision was timely filed with the
13 office of the board, the notice of appeal must be filed within 30 days after the
14 reconsideration decision is mailed to the parties, or the date the request for
15 reconsideration is considered denied in the absence of any action on the request,
16 whichever is earlier.

17 (f) The commission may require written briefs and make other rules and orders to
18 facilitate the business of the commission and advance the prompt, fair, and just
19 disposition of appeals.

20 **Sec. 23.30.128. Commission proceedings.** (a) An appeal from a decision of the
21 board under this chapter, and other proceedings under this section, shall be heard and
22 decided by a three-member panel of the commission. An appeal panel of the commission
23 must include the chair of the commission. The chair of the commission shall assign two
24 members to each appeal, including one commission member classified as representing
25 employees and one commission member classified as representing employers. Acts,
26 decisions, and orders of the commission panel in the appeal or related proceeding shall be
27 considered the acts, decisions, and orders of the full commission. The matter on appeal
28 shall be decided on the record made before the board, a transcript or recording of the
29 proceedings before the board, and oral argument and written briefs allowed by the
30 commission. Except as provided in (c) of this section, new or additional evidence may
31 not be received with respect to the appeal.

1 (b) The commission may review discretionary actions, findings of fact, and
2 conclusions of law by the board in hearing, determining, or otherwise acting on a
3 compensation claim or petition. The board's findings regarding the credibility of
4 testimony of a witness before the board are binding on the commission. The board's
5 findings of fact shall be upheld by the commission if supported by substantial evidence in
6 light of the whole record. In reviewing questions of law and procedure, the commission
7 shall exercise its independent judgment.

8 (c) The commission may hold hearings and receive evidence on applications for
9 (1) stays under AS 23.30.125; (2) attorney fees and costs of appeal; (3) waiver of fees by
10 indigent appellants; or (4) dismissal of appeals for failure to prosecute or upon settlement.
11 The commission may rely on new or additional evidence presented during the hearing in
12 making its decision on the application.

13 (d) The commission may affirm, reverse, or modify a decision or order upon
14 review and issue other orders as appropriate. The commission may remand matters it
15 determines were improperly, incompletely, or otherwise insufficiently developed. The
16 commission may remand for further proceedings and appropriate action with or without
17 relinquishing the commission's jurisdiction of the appeal. The administrative
18 adjudication procedures of AS 44.62 (Administrative Procedure Act) do not apply to the
19 proceedings of the commission.

20 (e) Within 90 days after written briefing on the appeal is completed or oral
21 argument is held, whichever is later, the commission shall issue a decision in writing.
22 The decision must contain a concise statement of reasons for the decision, including
23 findings of fact, if required, and conclusions of law. The commission shall serve each
24 party and the director with a copy of the decision. Appeals may be expedited for good
25 cause by the commission. Unless reconsideration is ordered under (f) of this section, a
26 decision under this subsection is the final commission decision.

27 (f) A party or the director may request reconsideration of a decision issued under
28 (e) of this section within 30 days after the date of service shown in the certificate of
29 service of the decision. The request must state specific grounds for reconsideration.
30 Reconsideration may be granted if, in reaching the decision, the commission (1)
31 overlooked, misapplied, or failed to consider a statute, regulation, court or administrative

1 decision, or legal principle directly controlling; (2) overlooked or misconceived a
2 material fact; (3) misconceived a material question in the case; or (4) applied law in the
3 ruling that has subsequently changed. The panel of the commission hearing the request
4 for reconsideration shall consist of the same members of the panel that issued the
5 decision. The commission may issue an order for reconsideration of all or part of the
6 decision upon request of a party or the director. Reconsideration is based on the record,
7 unless the commission allows additional argument. The power to order reconsideration
8 expires 60 days after the date of service, as shown on the certificate of service, of a
9 decision issued under (e) of this section. If the commission does not issue an order for
10 reconsideration within the time allowed for ordering reconsideration, a request for
11 reconsideration is considered denied. If reconsideration is ordered, the commission shall
12 issue a decision within 30 days after the close of the record on reconsideration. The
13 commission shall serve each party in the case with a copy of the decision upon
14 reconsideration. The decision upon reconsideration is the final commission decision.

15 (g) A decision of the commission becomes final on the

16 (1) 31st day after the date of service of a decision if reconsideration is not
17 requested;

18 (2) 61st day after the date of service of a decision if reconsideration is
19 requested but an order for reconsideration is not issued; or

20 (3) date of service of the commission decision upon reconsideration under
21 (f) of this section if reconsideration is requested and an order for reconsideration is
22 issued.

23 **Sec. 23.30.129. Judicial review of commission orders.** (a) Notwithstanding
24 the provisions of AS 44.62.560, orders of the commission may not be appealed to the
25 superior court. Consistent with AS 22.05.010(b), final decisions of the commission may
26 be appealed to the supreme court, and other orders may be reviewed by the supreme court
27 as provided by the Alaska Rules of Appellate Procedure.

28 (b) A finding by the commission concerning the weight to be accorded a
29 witness's testimony, including medical testimony and reports, is conclusive even if the
30 evidence is conflicting or susceptible to contrary conclusions. The commission's findings
31 of fact may be reversed on appeal if not supported by substantial evidence in light of the

1 whole record."

2

3 Renumber the following bill sections accordingly.

4

5 Page 28, following line 10:

6 Insert the following new material:

7 "(36) "commission" means the Workers' Compensation Appeals
8 Commission;"

9

10 Page 28, line 11:

11 Delete "(36)"

12 Insert "(37)"

13

14 Page 28, line 13:

15 Delete "(37)"

16 Insert "(38)"

17

18 Page 28, line 15:

19 Delete "(38)"

20 Insert "(39)"

21

22 Page 28, line 17:

23 Delete "(39)"

24 Insert "(40)"

25

26 Page 28, following line 20:

27 Insert a new bill section to read:

28 **** Sec. 47.** AS 39.25.110 is amended by adding a new paragraph to read:

29 (40) the chair of the Workers' Compensation Appeals Commission
30 (AS 23.30.007)."

31

1 Renumber the following bill sections accordingly.

2

3 Page 28, following line 23:

4 Insert a new bill section to read:

5 **** Sec. 49.** AS 39.50.200(b)(31) is amended to read:

6 (31) Workers' Compensation Board (AS 23.30.005) **and Workers'**
7 **Compensation Appeals Commission (AS 23.30.007);**"

8

9 Renumber the following bill sections accordingly.

10

11 Page 30, following line 5:

12 Insert new bill sections to read:

13 **** Sec. 53.** The uncodified law of the State of Alaska is amended by adding a new section to
14 read:

15 TRANSITION: INITIAL TERMS OF MEMBERS OF WORKERS' COMPENSATION
16 APPEALS COMMISSION. Notwithstanding AS 23.30.007(e), enacted by sec. 9 of this Act, the
17 terms of the initially appointed representative members of the Workers' Compensation Appeals
18 Commission, established by AS 23.30.007, enacted by sec. 9 of this Act, shall be set by the
19 governor to achieve staggered terms in the manner provided in AS 39.05.055.

20 *** Sec. 54.** The uncodified law of the State of Alaska is amended by adding a new section to
21 read:

22 TRANSITION: STAFF. (a) In order to ensure the smooth assumption of duties in the
23 shortest possible time, for a period of six months after the effective date of this section, the
24 director may, with the approval of the commissioner of labor and workforce development and
25 the chair of the commission, temporarily assign division employees to the commission and the
26 commission may reimburse the division for the temporarily assigned employees. Division
27 employees temporarily assigned to the commission shall continue in the same position and rate
28 of pay for the duration of the temporary assignment as the employees held at the division.

29 (b) In this section,

30 (1) "commission" means the Workers' Compensation Appeals Commission
31 established by AS 23.30.007, enacted by sec. 9 of this Act;

1 (2) "director" means the director of the division of workers' compensation in the
2 Department of Labor and Workforce Development;

3 (3) "division" means the division of workers' compensation in the Department of
4 Labor and Workforce Development."
5

6 Renumber the following bill sections accordingly.
7

8 Page 30, line 20, following "REGULATIONS.":

9 Insert "(a)"
10

11 Page 30, following line 25:

12 Insert the following new material:

13 "(b) In order to provide for the procedures and other administrative matters necessary to
14 ensure the on-going implementation of the state's workers' compensation laws to meet the urgent
15 needs of injured workers, and thus ensure the preservation of the public peace, health, safety, or
16 general welfare, the Workers' Compensation Appeals Commission established by AS 23.30.007,
17 enacted by sec. 9 of this Act, may adopt under AS 23.30.008, enacted by sec. 9 of this Act, as
18 emergency regulations, the regulations necessary to implement the changes made by this Act."
19

20 Page 30, line 30:

21 Delete "sec. 24"

22 Insert "sec. 25"
23

24 Page 31, line 5:

25 Delete "Section 49"

26 Insert "Section 56(a)"
27

28 Page 31, line 6:

29 Delete "31, and 50"

30 Insert "34, and 57"
31

- 1 Page 31, line 7:
- 2 Delete "secs. 51 and 52"
- 3 Insert "secs. 58 and 59"