

SENATE BILL NO. 119

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-NINTH LEGISLATURE - SECOND SESSION

BY SENATOR MICCICHE

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 is
 8 final and becomes effective when filed in the office of the board under AS 23.30.110.
 9 Before the 31st day after the decision or order is filed, a party may file a

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

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

12 (3) petition for modification under AS 23.30.130.

13 (b) A decision or order is not stayed pending the outcome on appeal unless the
 14 court so orders.

15 (c) The board's findings on the credibility of a witness and the weight to be
 16 given the testimony of a witness are binding on a reviewing court under AS 23.30.122.
 17 A finding of fact made by the board as a part of a decision or order shall be conclusive
 18 for a reviewing court if supported by substantial evidence in light of the whole record.
 19 To the extent that it does not conflict with the provisions of this section, AS 44.62.570
 20 applies to an appeal of a decision or order issued under this chapter.

21 (d) The director may intervene in an appeal under AS 44.62.560. If a party is
 22 not represented by counsel and a compensation order concerns an unsettled question
 23 of law, the director may file an appeal to obtain a judicial ruling.

24 (e) A court shall award a successful party to an appeal reasonable costs and, if
 25 the party is represented by an attorney, attorney fees that the court determines to be
 26 fully compensatory and reasonable. A court may not make an award of costs and
 27 attorney fees against an injured worker unless the court finds that the worker's position
 28 on appeal was frivolous or unreasonable or the appeal was sought in bad faith.

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

30 (f) If compensation payable under the terms of an award is not paid within 14
 31 days after it becomes due, there shall be added to that unpaid compensation an amount

1 equal to 25 percent of the unpaid installment. The additional amount shall be paid at
 2 the same time as, but in addition to, the compensation, unless review of the
 3 compensation order making the award as provided under **AS 23.30.126**
 4 [AS 23.30.008] and an interlocutory injunction staying payments is allowed by the
 5 court. The additional amount shall be paid directly to the recipient to whom the unpaid
 6 compensation was to be paid.

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

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

10 * **Sec. 8.** Rules 201.1, 401.1, and 501.1, Alaska Rules of Appellate Procedure, are repealed.

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

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

15 **INDIRECT COURT RULE AMENDMENTS.** The provisions of AS 23.30.126, added
 16 by sec. 5 of this Act, and the repeal of AS 23.30.007, 23.30.008, 23.30.125, 23.30.127,
 17 23.30.128, and 23.30.129 in sec. 9 of this Act have the effect of changing Rules 202(a),
 18 204(a) - (c), 210(e), 508(g), 601(b), 602, and 603, Alaska Rules of Appellate Procedure, by
 19 repealing the Alaska Workers' Compensation Commission and providing that appeals from
 20 the Alaska Workers' Compensation Board be brought in the superior court.

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

23 **TWO-THIRDS VOTE NOT REQUIRED.** Because Rules 201.1, 202(a), 204(a) - (c),
 24 210(e), 401.1, 501.1, 508(g), 601(b), 602, and 603, Alaska Rules of Appellate Procedure,
 25 were adopted under the Alaska Supreme Court's interpretive authority exercised under art. IV,
 26 sec. 1, Constitution of the State of Alaska, secs. 5, 8, and 9 of this Act take effect for purposes
 27 of Rules 201.1, 202(a), 204(a) - (c), 210(e), 401.1, 501.1, 508(g), 601(b), 602, and 603,
 28 Alaska Rules of Appellate Procedure, without needing to meet the two-thirds vote
 29 requirement normally applicable to changing court rules under art. IV, sec. 15, Constitution of
 30 the State of Alaska.

31 * **Sec. 12.** The uncodified 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. 13.** The uncodified 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 and placed within
 20 the jurisdiction of the superior court on December 2, 2016, under AS 22.10.020 and Rule 609,
 21 Alaska Rules of Appellate Procedure.

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

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

30 (d) Before November 1, 2016, a party or the director may request reconsideration of a
 31 Workers' Compensation Appeals Commission decision under AS 23.30.128(f), as that

1 subsection read on the day before the effective date of this Act. On or after November 1,
2 2016, a party seeking review of a Workers' Compensation Appeals Commission decision may
3 only file an appeal with the supreme court under AS 23.30.129, as that section read on the day
4 before the effective date of this Act.

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

7 TRANSITION: TERMS OF COMMISSIONERS. Notwithstanding AS 23.30.007(p),
8 the terms of individuals appointed to the Workers' Compensation Appeals Commission expire
9 February 2, 2017.

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