

**SENATE BILL NO. 29**

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTIETH LEGISLATURE - FIRST SESSION

BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 1/20/17

Referred: Labor and Commerce, Judiciary, Finance

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act repealing the Workers' Compensation Appeals Commission; relating to  
2 decisions and orders of the Workers' Compensation Appeals Commission; relating to  
3 superior court jurisdiction over appeals from Alaska Workers' Compensation Board  
4 decisions; repealing Rules 201.1, 401.1, and 501.1, Alaska Rules of Appellate Procedure,  
5 and amending Rules 202(a), 204(a) - (c), 210(e), 601(b), and 603(a), Alaska Rules of  
6 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 make available, upon  
10 request, the decisions and orders of the former Workers' Compensation Appeals  
11 Commission. Unless reversed or modified by a court, decisions of the former Workers'  
12 Compensation Appeals Commission have the force of legal precedent and shall stand  
13 instead of the order of the board from which review was taken.

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

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

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

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

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

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

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

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

1 the information to return the information to the employee as soon as practicable  
 2 following the issuance of the order.

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

4 **Sec. 23.30.126. Review of a board decision and order.** (a) A decision and  
 5 order of the board becomes effective when filed in the office of the board under  
 6 AS 23.30.110. A decision and order of the board becomes final and is not subject to  
 7 further review, unless the board on its own motion reconsiders the decision and order  
 8 under AS 44.62.540, or modifies the decision and order under AS 23.30.130, or a  
 9 party seeks review of the decision and order by filing 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;

12 (3) petition for review with the superior court under the rules for  
 13 appellate procedure; or

14 (4) petition for modification under AS 23.30.130.

15 (b) A decision and order is not stayed pending judicial review unless a party  
 16 applies for a stay and files a supersedeas bond, if required, in conformance with the  
 17 rules of appellate procedure, and the court orders a stay, in whole or in part. To stay  
 18 continuing future periodic compensation payments, the party applying for the stay  
 19 must show irreparable harm and the existence of the probability of the merits of the  
 20 appeal being decided adversely to the recipient of the compensation payments. To stay  
 21 a lump sum compensation payment, the party applying for the stay must show  
 22 irreparable harm and the existence of serious and substantial questions going to the  
 23 merits of the case.

24 (c) The board's findings regarding the credibility of the testimony of a witness  
 25 before the board are binding on the court as provided in AS 23.30.122. A finding of  
 26 fact made by the board as part of a decision and order shall be conclusive for a  
 27 reviewing court if supported by substantial evidence in light of the whole record. To  
 28 the extent that it does not conflict with the provisions of this chapter, AS 44.62.570  
 29 applies to judicial review.

30 (d) The director may intervene in an appeal or petition for review. If a party is  
 31 not represented by an attorney and a compensation order concerns an unsettled

1 question of law, the director may file an appeal or petition for review to obtain a  
2 ruling.

3 \* **Sec. 6.** AS 23.30.155 is amended by adding a new subsection to read:

4 (r) If compensation payable under the terms of an award is not paid within 14  
5 days after it becomes due, there shall be added to that unpaid compensation an amount  
6 equal to 25 percent of the unpaid installment. The additional amount shall be paid at  
7 the same time as, but in addition to, the compensation unless review of the  
8 compensation order making the award is had as provided in AS 23.30.126, and a court  
9 orders a stay of payments. The additional amount shall be paid directly to the recipient  
10 to whom the unpaid compensation was to be paid.

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

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

14 \* **Sec. 8.** The uncodified law of the State of Alaska is amended by adding a new section to  
15 read:

16 DIRECT COURT RULE AMENDMENT. Rule 204(c)(2), Alaska Rules of  
17 Appellate Procedure, is amended to read:

18 (2) Notwithstanding subparagraph (1), a bond for costs on appeal shall  
19 not be required in an appeal from a decision of the trial court in any criminal case or  
20 any civil case where an indigent party is entitled to court-appointed counsel, and a  
21 bond shall not be required from an employee appealing from a denial of compensation  
22 by the Alaska Workers' Compensation **Board** [APPEALS COMMISSION] or from a  
23 denial of a claim for benefits under AS 23.20 (Employment Security Act).

24 \* **Sec. 9.** Rules 201.1, 401.1, and 501.1, Alaska Rules of Appellate Procedure, are repealed.

25 \* **Sec. 10.** AS 23.30.007, 23.30.008, 23.30.009, 23.30.125, 23.30.127, 23.30.128, 23.30.129,  
26 23.30.155(f), 23.30.395(10); AS 39.25.110(40); AS 44.64.020(a)(12), and 44.64.020(a)(13)  
27 are repealed.

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

30 INDIRECT COURT RULE AMENDMENTS. (a) The repeal of AS 23.30.129 in sec.  
31 10 of this Act, has the effect of amending 202(a), Alaska Rules of Appellate Procedure by

1 removing the need for provisions in that rule governing appeals from the Workers'  
2 Compensation Appeals Commission to the supreme court after that commission is dissolved.

3 (b) The repeal of AS 23.30.128 in sec. 10 of this Act has the effect of amending Rule  
4 204(a)(1), Alaska Rules of Appellate Procedure, by removing the need for the provisions in  
5 that rule governing the time period for appeals from the Workers' Compensation Appeals  
6 Commission under AS 23.30.128(g) after that commission is dissolved and the time period  
7 for filing any appeal from a final decision of that commission has run.

8 (c) The repeal of AS 23.30.128 and 23.30.129 in sec. 10 of this Act has the effect of  
9 amending Rule 204(a)(3), Alaska Rules of Appellate Procedure, by removing the need for  
10 provisions on motions that terminate the time for filing appeals of the Workers' Compensation  
11 Appeals Commission after that commission is dissolved.

12 (d) The repeal of AS 23.30.008 in sec. 10 of this Act has the effect of amending Rule  
13 204(a)(5), Alaska Rules of Appellate Procedure by removing the need to reference  
14 AS 23.30.008(d) after that commission is dissolved.

15 (e) The repeal of AS 23.30.129 in sec. 10 of this Act has the effect of amending Rule  
16 204(b)(5), Alaska Rules of Appellate Procedure, by necessitating a change in the name of the  
17 administrative agency that issued the final administrative denial of workers' compensation  
18 benefits from the Workers' Compensation Appeals Commission to the Alaska Workers'  
19 Compensation Board after the Workers' Compensation Appeals Commission is dissolved and  
20 the time period for filing any appeal from a final decision of that commission has run.

21 (f) The repeal of AS 23.30.007, 23.30.008, 23.30.009, 23.30.125, 23.30.127,  
22 23.30.128, and 23.30.129 in sec. 10 of this Act has the effect of amending Rule 210(e)(1),  
23 Alaska Rules of Appellate Procedure, by removing the need to reference preparation of the  
24 record on appeal from a final decision of the Workers' Compensation Appeals Commission  
25 after that commission is dissolved and the records on any appeals from final decisions of that  
26 commission have been transmitted to the supreme court.

27 (g) The repeal of AS 23.30.129 in sec. 10 of this Act has the effect of amending Rule  
28 601(b), Alaska Rules of Appellate Procedure, by removing the need to reference that an  
29 appeal from the Workers' Compensation Appeals Commission shall be taken to the supreme  
30 court under AS 23.30.129 after the Workers' Compensation Appeals Commission is dissolved  
31 and any appeal from a final decision of that commission has been timely filed with the

1 supreme court.

2 (h) AS 23.30.126, added by sec. 5 of this Act, has the effect of amending Rule 603(a),  
3 Alaska Rules of Appellate Procedure, by establishing a standard for seeking a stay of  
4 compensation payments in an appeal filed in the superior court from a final decision of the  
5 Alaska Workers' Compensation Board.

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

8 **CONDITIONAL EFFECT.** This Act takes effect only if secs. 8, 9, and 11 of this Act,  
9 receive the two-thirds majority vote of each house required by art. IV, sec. 15, Constitution of  
10 the State of Alaska.

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

13 **APPLICABILITY.** Before December 2, 2017, AS 23.30.005, 23.30.007, 23.30.008,  
14 23.30.009, 23.30.107(b), 23.30.108(d), 23.30.108(e), 23.30.125, 23.30.127, 23.30.128,  
15 23.30.129, 23.30.155(f), 23.30.395(10); AS 39.25.110(40); AS 39.50.200(b)(31); and  
16 AS 44.64.020(a)(12) and (13), as those statutes read on the day before the effective date of  
17 this Act, continue to apply to appeals, petitions for review, and other proceedings pending  
18 before the Workers' Compensation Appeals Commission. Appeals, petitions for review, and  
19 other proceedings under this subsection shall be continued in the Workers' Compensation  
20 Appeals Commission through December 1, 2017. AS 23.30.126, added by sec. 5 of this Act,  
21 and AS 23.30.155(r), added by sec. 6 of this Act, do not apply to appeals, petitions for review,  
22 or other proceedings under this subsection. AS 23.30.129, as it read on the day before the  
23 effective date of this Act, shall apply to appeals to the state supreme court from final decisions  
24 of the Workers' Compensation Appeals Commission issued on or before December 1, 2017,  
25 and to petitions for review from interlocutory decisions of the Workers' Compensation  
26 Appeals Commission issued on or before December 1, 2017.

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

29 **TRANSITIONAL PROVISIONS.** (a) Appeals, petitions for review, and other  
30 proceedings that seek review of Workers' Compensation Board decisions and orders, and that  
31 have not been filed before the Workers' Compensation Appeals Commission on or before

1 May 31, 2017, must be filed in the superior court on or after June 1, 2017, in accordance with  
2 AS 23.30.126, added by sec. 5 of this Act, and the filing deadlines in AS 44.62.560 and Rule  
3 602(a)(2), Alaska Rules of Appellate Procedure.

4 (b) A party who seeks review of a final Workers' Compensation Appeals Commission  
5 decision issued on or before December 1, 2017, shall file an appeal to the state supreme court  
6 under AS 23.30.129, and the rules of appellate procedure, as that statute and those rules read  
7 on the day before the effective date of this Act. A party who seeks review of an interlocutory  
8 Workers' Compensation Appeals Commission decision issued on or before December 1,  
9 2017, shall file a petition for review with the state supreme court under AS 23.30.129, and the  
10 rules of appellate procedure, as that statute and those rules read on the day before the effective  
11 date of this Act. Cases in which a party seeks review of a final Workers' Compensation Board  
12 decision and order issued after a remand from the Workers' Compensation Appeals  
13 Commission must be filed in the superior court on or after June 1, 2017, in accordance with  
14 AS 23.30.126, added by sec. 5 of this Act.

15 (c) The Workers' Compensation Appeals Commission's power to order  
16 reconsideration under AS 23.30.128(f), as that section read on the date before the effective  
17 date of this Act, expires on December 2, 2017. Requests for reconsideration pending before  
18 the Workers' Compensation Appeals Commission shall be automatically denied on  
19 December 2, 2017, and, notwithstanding AS 23.30.128(g), as that section read on the day  
20 before the effective date of this Act, the decision of the Workers' Compensation Appeals  
21 Commission becomes final on December 2, 2017. If the Workers' Compensation Appeals  
22 Commission ordered reconsideration but did not issue a decision on reconsideration on or  
23 before December 1, 2017, reconsideration shall be automatically denied on December 2,  
24 2017, and, notwithstanding AS 23.30.128(g), as that section read on the day before the  
25 effective date of this Act, the original decision of the Workers' Compensation Appeals  
26 Commission becomes final on December 2, 2017. A party whose request for reconsideration  
27 was denied under this subsection and who seeks further review must file an appeal in the  
28 supreme court under AS 23.30.129, as it read on the day before the effective date of this Act,  
29 and in accordance with the rules of appellate procedure.

30 (d) On December 2, 2017, the Workers' Compensation Appeals Commission shall  
31 transfer the files of all appeals, petitions for review, and other proceedings that were pending

1 before June 1, 2017 and were not completed on or before December 1, 2017, to superior  
2 court, which will assume jurisdiction under AS 22.10.020, and Rules 604(b) and 609, Alaska  
3 Rules of Appellate Procedure. The Workers' Compensation Appeals Commission shall  
4 provide notice to all parties of record 30 days before it transfers a pending case, advising  
5 parties of the transfer of jurisdiction and the effective date of the transfer. The Workers'  
6 Compensation Appeals Commission shall prepare each record in accordance with Rule  
7 604(b), Alaska Rules of Appellate Procedure, and mail or hand deliver the record in the  
8 pending case to the superior court in the judicial district where the Workers' Compensation  
9 Board issued the contested decision and order. If the superior court determines that the record  
10 does not comply with Rule 604(b), Alaska Rules of Appellate Procedure, the court may return  
11 the record to the Workers' Compensation Board and direct the Workers' Compensation Board  
12 to conform the record as may be necessary.

13 \* **Sec. 15.** 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(e),  
16 the terms of the members appointed to the Workers' Compensation Appeals Commission  
17 expire December 31, 2017.

18 \* **Sec. 16.** This Act takes effect June 1, 2017.