

CS FOR SENATE BILL NO. 76(L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-FIRST LEGISLATURE - SECOND SESSION

BY THE SENATE LABOR AND COMMERCE COMMITTEE

Offered: 2/12/20

Referred: Judiciary, Finance

Sponsor(s): SENATORS WIELECHOWSKI, Bishop, Costello, Gray-Jackson, Stevens, Begich

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), 602(c) and (h), and 603(a),**
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 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 may be modified under AS 23.30.130
7 or reconsidered under AS 44.62.540. A party may seek review of a decision and order
8 of the board by filing with the superior court a notice of appeal under AS 44.62.560 or
9 a petition for review under the Alaska Rules of Appellate Procedure.

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

12 (1) applies for a stay;

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

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

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

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

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

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

29 (f) If compensation payable under the terms of an award is not paid within 14
30 days after it becomes due, there shall be added to that unpaid compensation an amount
31 equal to 25 percent of the unpaid installment. The additional amount shall be paid at

1 the same time as, but in addition to, the compensation, unless **there is a** review of the
 2 compensation order making the award as provided under **AS 23.30.126 and a court**
 3 **orders a stay of payments** [AS 23.30.008 AND AN INTERLOCUTORY
 4 INJUNCTION STAYING PAYMENTS IS ALLOWED BY THE COURT]. The
 5 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
 9 WORKERS' COMPENSATION APPEALS COMMISSION (AS 23.30.007)];

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

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

14 * **Sec. 9.** AS 23.30.007, 23.30.008, 23.30.009, 23.30.125, 23.30.127, 23.30.128, 23.30.129,
 15 23.30.395(10); AS 39.25.110(40); AS 44.64.020(a)(12), and 44.64.020(a)(13) are repealed.

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

18 INDIRECT COURT RULE AMENDMENTS. (a) The provisions of AS 23.30.126,
 19 added by sec. 5 of this Act, and the repeals of AS 23.30.007, 23.30.008, 23.30.009, 23.30.125,
 20 23.30.127, 23.30.128, and 23.30.129 in sec. 9 of this Act, have the effect of changing Rules
 21 202(a), 204(a) - (c), 210(e), and 601(b), Alaska Rules of Appellate Procedure, by repealing
 22 the Alaska Workers' Compensation Appeals Commission and providing that appeals and
 23 petitions for review from decisions of the Alaska Workers' Compensation Board be brought in
 24 superior court.

25 (b) AS 23.30.126, added by sec. 5 of this Act, has the effect of amending Rules
 26 602(c) and (h), Alaska Rules of Appellate Procedure, by permitting the director of the
 27 division of workers' compensation to file an appeal or petition for review in the superior court
 28 under specified circumstances or intervene in an appeal or petition for review in the superior
 29 court.

30 (c) AS 23.30.126, added by sec. 5 of this Act, has the effect of amending Rule 603(a),
 31 Alaska Rules of Appellate Procedure, by establishing a standard for seeking a stay of

1 compensation payments in an appeal filed in the superior court from a final decision of the
2 Alaska Workers' Compensation Board.

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

5 APPLICABILITY. (a) AS 23.30.005, 23.30.007, 23.30.008, 23.30.009, 23.30.107(b),
6 23.30.108(d), 23.30.108(e), 23.30.125, 23.30.127, 23.30.128, 23.30.129, 23.30.155(f),
7 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
8 those statutes read on the day before the effective date of this Act, continue to apply to
9 appeals, petitions for review, and other proceedings pending before the Workers'
10 Compensation Appeals Commission on or before December 1, 2020. Appeals, petitions for
11 review, and other proceedings under this subsection shall be continued in the Workers'
12 Compensation Appeals Commission on or before December 1, 2020.

13 (b) AS 23.30.126, added by sec. 5 of this Act, and AS 23.30.155(f), as amended by
14 sec. 6 of this Act, do not apply to appeals, petitions for review, or other proceedings under (a)
15 of this section.

16 (c) AS 23.30.129, as it read on the day before the effective date of this Act, applies to
17 appeals to the Alaska supreme court from final decisions of the Workers' Compensation
18 Appeals Commission issued on or before December 1, 2020, and to petitions for review from
19 interlocutory decisions of the Workers' Compensation Appeals Commission issued on or
20 before December 1, 2020.

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

23 TRANSITIONAL PROVISIONS. (a) Appeals, petitions for review, and other
24 proceedings that seek review of decisions and orders of the Alaska Workers' Compensation
25 Board and that have not been filed before the Workers' Compensation Appeals Commission
26 before the effective date of this Act, shall be filed in the superior court on or after June 1,
27 2020, in accordance with AS 23.30.126, added by sec. 5 of this Act, and the filing deadlines
28 in AS 44.62.560 and Rule 602(a)(2), Alaska Rules of Appellate Procedure.

29 (b) A party seeking review of a final Workers' Compensation Appeals Commission
30 decision issued on or before December 1, 2020, shall file an appeal to the Alaska supreme
31 court under AS 23.30.129, and the Alaska Rules of Appellate Procedure, as that statute and

1 those rules read on the day before the effective date of this Act. A party who seeks review of
2 an interlocutory decision of the Workers' Compensation Appeals Commission issued on or
3 before December 1, 2020, shall file a petition for review with the Alaska supreme court under
4 AS 23.30.129, and the Alaska Rules of Appellate Procedure, as that statute and those rules
5 read on the day before the effective date of this Act. Cases in which a party seeks review of a
6 final Alaska Workers' Compensation Board decision and order issued after a remand from the
7 Workers' Compensation Appeals Commission must be filed in the superior court on or after
8 June 1, 2020, in accordance with AS 23.30.126, added by sec. 5 of this Act.

9 (c) The power of the Workers' Compensation Appeals Commission to order
10 reconsideration under AS 23.30.128(f), as that section read on the day before the effective
11 date of this Act, expires on December 2, 2020. Requests for reconsideration pending before
12 the Workers' Compensation Appeals Commission shall be automatically denied on
13 December 2, 2020, and, notwithstanding AS 23.30.128(g), as that section read on the day
14 before the effective date of this Act, the decision of the Workers' Compensation Appeals
15 Commission becomes final on December 2, 2020. If the Workers' Compensation Appeals
16 Commission ordered reconsideration but did not issue a decision on reconsideration on or
17 before December 1, 2020, reconsideration shall be automatically denied on December 2,
18 2020, and, notwithstanding AS 23.30.128(g), as that section read on the day before the
19 effective date of this Act, the original decision of the Workers' Compensation Appeals
20 Commission becomes final on December 2, 2020. A party whose request for reconsideration
21 was denied under this subsection and who seeks further review shall file an appeal in the
22 Alaska supreme court under AS 23.30.129, as that section read on the day before the effective
23 date of this Act, and in accordance with the Alaska Rules of Appellate Procedure.

24 (d) On December 2, 2020, the Workers' Compensation Appeals Commission shall
25 transfer the files of all appeals, petitions for review, and other proceedings that were pending
26 before June 1, 2020, and were not completed on or before December 1, 2020, to the superior
27 court, which shall assume jurisdiction under AS 22.10.020, and Rules 604(b) and 609, Alaska
28 Rules of Appellate Procedure. The Workers' Compensation Appeals Commission shall
29 provide notice to all parties of record 30 days before it transfers a pending case, advising
30 parties of the transfer of jurisdiction and the effective date of the transfer. The Workers'
31 Compensation Appeals Commission shall prepare each record in accordance with Rule

1 604(b), Alaska Rules of Appellate Procedure, and mail or hand deliver the record in the
2 pending case to the superior court in the judicial district where the Alaska Workers'
3 Compensation Board issued the contested decision and order. If the superior court determines
4 that the record does not comply with Rule 604(b), Alaska Rules of Appellate Procedure, the
5 court may return the record to the Alaska Workers' Compensation Board and direct the Alaska
6 Workers' Compensation Board to conform the record as may be necessary.

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

9 TRANSITION: TERMS OF COMMISSIONERS. Notwithstanding AS 23.30.007(e),
10 as repealed by sec. 9 of this Act, the terms of the members appointed to the Workers'
11 Compensation Appeals Commission expire December 31, 2020.

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

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

17 * **Sec. 15.** If this Act takes effect under sec. 14 of this Act, it takes effect June 1, 2020.