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February 17, 2017

Representative Sam Kito
House Labor & Commerce Committee Chair
State Capitol, Room 403
Juneau, AK 99801

RE: Senate Bill 40/House Bill 79

Dear Representative Kito:

The Workers' Compensation Committee of Alaska (WCCA) is an employer advocacy group dedicated to helping educate and advocate for Alaska employers on issues regarding workers' compensation. We thank the governor for taking an interest in the workers' compensation system and introducing legislation meant to improve the delivery of benefits to injured workers, deter workers' compensation fraud, ensure compliance with the requirement to carry workers' compensation insurance, and provide adequate funding for administration of the system.

WCCA has reviewed the bill and we would like to share some of our thoughts with you:

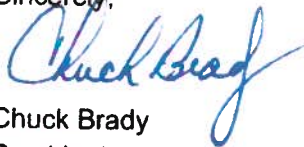
- We welcome efforts at speeding up dispute resolution before the Workers' Compensation Board. Although setting a hearing within 30 days after a claim is filed would move things along, it may not allow sufficient time for employers to do a proper investigation. We think there should also be a provision for mandatory mediation.
- Ending the practice of allowing non-attorneys to represent parties before the Board is a good move, but we would like to see the language amended to allow paralegals under the direct supervision of an attorney to represent parties.
- We oppose eliminating the statute of limitations under AS 23.30.110 (c).
- Eliminating Board approval of attorney fees on settlements that are effective upon filing (don't require Board approval) is a positive step.
- The bill's attempt to speed up medical care is well-intended, but the requirement to authorize or controvert treatment within 60 days of receipt of a provider's written request is problematic for employers and will likely result in a significant increase in controversies and litigation, further

CHUCK BRADY, PRESIDENT; MISTY STEED, VICE PRESIDENT; JOAQUITA MARTIN, TREASURER;
LIZ GLOOSCHENKO, SECRETARY

- delaying the delivery of medical care. We would rather see the bill state that pre authorization of treatment is allowed, but not required
- We applaud the bill's effort to prevent workers' compensation fraud. We support the affirmative duty of injured workers to report the receipt of wages and other types of wage-replacement benefits.
 - Regarding the misclassification of employees, the WCCA agrees that employers should not attempt to defraud insurance carriers by misclassifying employees, but there should be safeguards against pursuing employers who inadvertently misclassify employees without malicious intent.
 - The WCCA agrees with the bill's intent to further clarify the definition of "independent contractor," but we are concerned that the proposed definition is too limiting. Some of the language ignores the economic realities of certain sole proprietors and owner-operators and would result in the disruption of accepted business practices that have been in place in Alaska and around the country for decades.
 - The WCCA agrees with the bill's intent to limit civil penalties against uninsured employers to three times the amount of the workers' compensation premium that would have been paid.
 - We agree with the bill's intent to reduce administrative costs by allowing payment of benefits electronically, mandating electronic filing of certain reports, and eliminating the requirement that corporate officers get Division approval to opt out of workers' compensation coverage for themselves. We also agree with incorporating medical publications and amended future versions into Department regulations. We do not support the imposition of a penalty for employers and insurers who don't file timely proof-of-insurance.
 - The WCCA at this time is not taking a position on the phasing out of the Second Injury Fund. However, we are concerned about what happens to any surplus funds once all claims are paid and closed. Because this money is paid directly by employers and insurance companies specifically for the purpose of paying claims against the Fund, any surplus should either be returned to employers and insurance carriers or applied to some other purpose that would result in a reduction of premium taxes or WSCAA assessments.
 - The WCCA doesn't necessarily oppose a greater percentage of the annual service fees going to fund the Department of Labor and Workforce Development. However, we maintain that the Department of Labor and Workforce Development still needs to implement efficiencies and reform measures designed to reduce costs, such as repealing AS 23.30.005 in whole or in part, before WCCA members are willing to support a change.

As always, the WCCA is available to provide input and guidance on workers' compensation issues. The WCCA believes that comprehensive workers' compensation reform is what Alaska employers need...desperately! Please let us know how we can help.

Sincerely,



Chuck Brady
President

cc: Commissioner Heidi Drygas
Alaska Department of Labor & Workforce Development
P.O. Box 111149
Juneau, AK 99811

Alaska Trucking Association, Inc.

3443 Minnesota Drive · Anchorage, Alaska 99503 · Phone (907) 276-1149 · Fax (907) 274-1946

www.aktrucks.org

The authoritative voice of the trucking industry in Alaska

HB79 OMNIBUS WORKERS' COMPENSATION

House Labor and Commerce Committee

3:15 pm, February 20, 2017

Aves D. Thompson, Executive Director

Alaska Trucking Association

Thank you. Mr. Chair and members of the committee, I am Aves Thompson, Executive Director of the Alaska Trucking Association. The Alaska Trucking Association is a state wide organization representing the interests of our nearly 200 member companies from Barrow to Ketchikan. Freight movement represents a large chunk of our economy and impacts all of us each and every day. The simple truth is that “if you got it, a truck brought it.”

HB79 proposes changes in AS 23.30.230(a)(11) to add language to define the “tests” to determine when a person is an independent contractor for purposes of workers compensation coverage. The Alaska Trucking Association has some concerns about these tests. The independent contractor or owner operators business model has played an important role in the trucking industry for decades.

Owner-operators serve a valued function within the trucking industry. They are small business owners who rely on their own prudent decision-making and hard work to earn a living and build a business. They offer



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professionally-staffed hauling and delivery capacity to motor carriers. Their revenues and profit are directly tied to their level of effort and business judgments – that is, choosing the right truck (make, model and condition) for their operations; deciding how best to finance that truck; selecting repair and maintenance vendors; and deciding whether to hire drivers and substitute drivers. But those initial decisions are only the tip of the iceberg, ongoing business decisions must be made regarding fueling times and vendors; software use including routing programs; insurance coverages, and a wide variety of other needed products-and-services. One of the most critical decisions that owner-operators make is their selection of a motor carrier partner. They must select a carrier whose operations and procedures fit the contractor's business plan. Then as the business grows, the owner-operator must decide the utility of acquiring additional trucks and hiring more drivers and decide whether to partner with multiple carriers.

Motor carriers can rely on the owner-operator's independent motivation and business skills without having to apply the constant and detailed control necessary with the carriers' employee-drivers. The basic bargain the owner-operator strikes with each of its motor-carrier customers turns on the potential for mutual profit. If the owner-operator works hard and makes smart business decisions, he or she profits. The motor carrier profits by the professional, timely, and efficient delivery of freight by this self-motivated independent contractor. The motor carrier can conserve its management resources for other key tasks such as business generation, customer service and financial management.



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Owner operators are an effective method for the industry to quickly respond to changing customer or market demands by allowing expansion and contraction of the work force.

It is also important to note that equipment and driver leasing in the trucking business is heavily regulated by both Federal Statute, 49 USC 14102, Leased Motor Vehicles and US DOT regulation, 49 CFR part 376, Lease and Interchange of Vehicles.

The proposed changes to the WC statute essentially preclude the use of owner operators in the trucking business in a number of different ways. The rules or tests proposed in HB79 dealing with economic reality in (11)(A) rules out an owner operator who works primarily for one motor carrier although the owner operator may work occasionally for other motor carriers. The second instance is in (11)(E), which leaves open interpretation of “direction of the motor carrier to the contractor” or owner operator and does not clearly specify that many times direction is given to the owner operator that results from customer demands or the requirement of some level of governmental law or regulation. The third instance is found in (11)(F) that prohibits a motor carrier from hiring an owner operator to haul a load of freight.

Our first recommendation is to provide an exemption in AS 23.30.230(a) that will exempt truck drivers from the provisions of this act in the same way that taxi drivers and network transportation drivers are exempted in current law and in SB14. This will clearly establish the truck driver owner operator business model in Alaska law.



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Our second recommendation (ATA#1) is the adoption of a distinct truck driver independent contractor/owner operator definition and set of tests. We have provided specific language to the Commissioner of the Department of Labor and Workforce Development to accomplish our recommendation.

Thirdly, we have provided proposed changes to the language contained in HB79 that will help to address our issues but not as effectively as our first recommendation. (ATA #2)

We are happy to work with the proposers of the changes to assist in clarifying the issues.

Thank you for your time and I will try to answer any questions.

Aves Thompson
Executive Director



If you got it, a truck brought it...

ATA
#1

American Trucking Associations
INDEPENDENT CONTRACTOR MODEL DEFINITION LANGUAGE

PROPOSED BLANKET EXEMPTION

General Exemption:

An independent contractor is an individual who owns or holds under a bona fide lease a motor vehicle which the individual leases to a motor carrier and who personally operates such leased equipment under a written agreement with the motor carrier that specifies that such operations involve an independent contractor relationship.

PROPOSED FACTOR TEST

Independent Contractor Determination

A person operating a motor vehicle for a carrier of property under this chapter shall be considered an independent contractor and not an employee if each of the following factors is substantially present:

- a. The person makes a material investment or incurs a material obligation related to equipment contracted to the carrier and used in performing service.
- b. The person has direction and control in meeting and performing contract obligations subject to conformance with governmental dictates, lawful requirements of third parties relative to the transport or other contractual obligations undertaken, and any reasonable administrative and clerical procedures needed for contract administration.
- c. The person has the principal burden of the operating costs and personal expenses related to contract work.
- d. The person's compensation is based primarily on factors related to contract work and not on the number of hours worked and affords the person the opportunity to realize a profit or loss based on the relationship of business receipts and expenditures.
- e. The person is responsible for hiring or otherwise engaging and paying the necessary personnel to operate the equipment and meet any contract obligations related to it.
- f. A written contract governs the relationship and specifies the relationship of the parties to be that of independent contractor and not an employer-employee relationship.

Alaska HB79/SB40 (bills deal with WC)

ATA
#2

9 * Sec. 31. AS 23.30.230(a) is amended to read:

10 (a) The following persons are not covered by this chapter:

11

12 (2) a cleaning person;

13 (3) harvest help and similar part-time or transient help;

14 (4) a person employed as a sports official on a contractual basis and
15 who officiates only at sports events in which the players are not compensated; in this

16 paragraph, "sports official" includes an umpire, referee, judge, scorekeeper,

17 timekeeper, organizer, or other person who is a neutral participant in a sports event;

18 (5) a person employed as an entertainer on a contractual basis;

19 (6) a commercial fisherman, as defined in AS 16.05.940;

20 (7) an individual who drives a taxicab whose compensation and written
21 contractual arrangement is as described in AS 23.10.055(a)(13), unless the hours

22 worked by the individual or the areas in which the individual may work are restricted

23 except to comply with local ordinances;

24 (8) a participant in the Alaska temporary assistance program

25 (AS 47.27) who is engaged in work activities required under AS 47.27.035 other than
26 subsidized or unsubsidized work or on-the-job training;

27 (9) a person employed as a player or coach by a professional hockey

28 team if the person is covered under a health care insurance plan provided by the

29 professional hockey team, the coverage is applicable to both work related and

30 nonwork related injuries, and the coverage provides medical and related benefits as

31 required under this chapter, except that coverage may not be limited to two years from

1 the date of injury as described under AS 23.30.095(a); in this paragraph, "health care
2 insurance" has the meaning given in AS 21.12.050; [AND]

3 (10) a person working as a qualified real estate licensee who performs
4 services under a written contract that provides that the person will not be treated as an
5 employee for federal income tax or workers' compensation purposes; in this
6 paragraph, "qualified real estate licensee" means a person who is required to be
7 licensed under AS 08.88.161 and whose payment for services is directly related to
8 sales or other output rather than the number of hours worked; and

9 (11) a person employed as an independent contractor; a person is
10 an independent contractor only if the person

11 (A) maintains a licensed business; [THE SUCCESS OR
12 PROFITABILITY OF WHICH DOES NOT DEPEND EXCLUSIVELY OR PRIMARILY ON THE
13 INDIVIDUAL FOR WHOM OR THE ENTITY FOR WHICH SERVICES ARE PERFORMED;]

14 (B) has a federal employer identification number issued by
15 the Internal Revenue Service or has filed business or self-employment
16 income tax returns with the Internal Revenue Service the previous tax
17 year, or, for a new business that was not operating in the previous tax
18 year, intends to file business or self-employment tax returns with the
19 Internal Revenue Service;

20 (C) has an express contract to perform the services;

21 (D) maintains liability insurance or other insurance policies
22 necessary to protect the employees, financial interests, and customers of
23 the person's business;

24 (E) is free from direction and control over the means and
25 manner of providing services, subject only to the right of the individual
26 for whom or entity for which the services are provided to specify the
27 desired results, completion schedule, or range of work hours[;] and any work rules provided
by any governmental rule, statute or regulation;

28 [(F) IS ENGAGED IN A TRADE, OCCUPATION, PROFESSION, OR
29 BUSINESS TO PROVIDE SERVICES THAT ARE OUTSIDE THE USUAL COURSE OF BUSINESS
30 FOR THE INDIVIDUAL FOR WHOM OR THE ENTITY FOR WHICH THE SERVICES ARE
31 PERFORMED;]

2 [(G)] (F) incurs most of the expenses for materials, tools,
3 equipment, labor, and other operational costs necessary for the person's
4 business;
5 [(H)] (G) has the opportunity for profit and may suffer loss based
6 on the management of revenue and expenses with the person's business;
7 [(I)] (H) does not work as part of a team of individuals or entities
8 on a singular task, such as painting a building or installing a roof, where
9 the work performed by the person cannot be clearly isolated from the
10 work performed by other individuals or entities;
11 [(J)] (I) hires, pays, controls, and fires any employees required
12 to perform the work for which the person was hired; and
13 [(K)] (J) maintains a business location separate from the
14 location of the individual for whom or the entity for which services are
 performed.

2017 Workman's' Comp Issues

I am Shelly Erickson, a small family business owner of multiple business types. I have been the recipient of claims against my workman's comp policies. It has been frustrating that the State of Alaska laws in this area are all written in favor of the employee, no matter what the situation.

Please address the following as you are working on issues with SB29 and HB69 Repeal Workers' Comp Appeals Commission:

1. New Hires need to reveal or release workman's comp records
 - a. Problem
 - i. New hire physicals are expensive
 - ii. The applicant can and will lie to the medical world
 - iii. Repeat workman's comp claimants continue to abuse the system and employers because of lack of accountability by the law
2. There needs to be laws in place to protect the small businesses from the abuse of employees not following the policies for safety set in place or using the safety gear they are instructed to use.

 - a. The law assumes that the business is irresponsible.
 - b. There is no accountability for the employee in the law who disobey the safety rules repeatedly or intentionally.
 - c. Many small businesses in Homer can share similar complaints.
 - d. Insurance agents have to deal with the FRAUD yearly. There are many examples around Homer and the State of Alaska.
3. Boat owners are assumed to be negligent.

The law is in the deckhands favor – doesn't matter what the deckhand does, the boat owner is negligent.

Insurance has to cave to the fraud because of the law, even when they know there is fraudulent case.
4. Workman's Comp Insurance rates

- a. A very costly system for a small business owner, as the insurance has to settle for amounts in extreme of the problem.
 - b. FRAUD is the cause of high insurance rates
- 5. There needs to be fair consequences to anyone on either side – employer/employee. This one sided system is wrong and the more desperate people are in their private lives, the more they are looking at ways to get around the law and find money. The State needs to have a place to bring these fraudulent cases to and have them dealt with in a fair way for both the employer and employee. If the law cannot be written so these issues can be fixed within the insurance industry, then the state needs to provide a place for the abuse that is happening within the law to be addressed and make it fair for both sides.
- 6. People need to buy disability insurance so if they get hurt off the job and become disabled, they use that instead of using workman's comp.

Please include this in your public testimony. I would be more than happy to talk with you or look for creative solutions to improve the workman's comp laws. I know that other business owners and insurance industry would too. This cannot be a political issue, because it is literally about the health and wealth of our small businesses.

Shelly Erickson

PO Box 3695

Homer, AK 99603



WESTERN REGION

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Sacramento, CA 95814

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www.aiadc.org

To: The Honorable Governor Bill Walker

From: Katherine Pettibone, Vice President Western Region
American Insurance Association

Re: SB 40 and HB 79 Worker's Compensation Bills

Position: **SUPPORT**

The American Insurance Association is pleased to support SB 40 and HB 79, which streamline procedures in the worker's compensation and reduce the occasions of employees going without coverage. The measures, among other things, eliminate the second injury fund on a prospective basis, provide more clarity in defining a worker as an employee or independent contractor, allow payments by debit card or electronic funds transfer, strengthen penalties on premium fraud and misclassification of employees, and clarify a medical provider's requirement to provide a written request for medical treatment. These measures provide notable improvements to Alaska's worker's compensation system that alleviate unnecessary friction and costs in the system.

The bills contain various improvements helping to provide accountability and adequate coverage for employees. Among other changes, the measures will reduce potential for misclassification of employees and questionable leasing practices, which unfortunately some employers have used to reduce coverage requirements. AIA is very supportive of the independent contractor test contained in the bill, as carriers seek clarity on whether an individual is an employee or an independent contractor.

The legislation also strengthens requirements for employees to report wages they receive while receiving workers' compensation benefits, as well as expanding liability among those employers who are shown to be evading workers' compensation requirements. Helping transparency and accountability will help make sure that both sides of the equation are being accounted for.

Other benefits include streamlining dispute resolution by speeding up the hearings and ending a practice of allowing non-attorneys to represent claimants in hearings. Employers must also authorize medical treatment for an injured worker on a providers' request and the bill ends uncertainty following a 2014 state Supreme Court decision over when treatment must be authorized by employers.

Finally, we endorse the elimination of the Second Injury Fund. The measures would eliminate the second injury fund on a going forward basis. Second injury funds are inconsistent with the

principle that costs should be internalized and, instead, require that all employers subsidize, via the assessment, benefits paid to claimants who were injured at another employer's workplace. Second injury funds tend to generate transaction costs and disputes as questions arise whether a claim properly belongs in the second injury fund. In addition, second injury funds often accumulate large unfunded deficits as the funds' are financed on a pay as you go process through assessments for current benefit payments.

For these reasons, we are pleased to support these measures and thank you for your efforts to improve the worker's compensation system.

Dear Committee Members,

I have been a member of the Alaska Bar since 1977. Some years ago I became aware of a rather chilling practice in the Workers Compensation process that I found inexcusable, and I have been pursuing a "fix" with my local Anchorage Representatives since. Representatives Gara and Spohnholz have been very gracious with their time in addressing this matter with me and the Administration and HB79 would provide minimal resolution of the problem.

Specifically, some Alaska Workers Compensation insurers have refused to provide medical service providers preauthorization for medical services after a claim has been accepted, and this has resulted in employees not receiving medical major procedures for months. Consider the following example. Janet is injured in the workplace and files an uncontested workers comp. claim. Her doctors order shoulder surgery. The doctors' office contacts the insurer and requests preauthorization as they would with respect to any other insurer. The insurer orders a second medical opinion but refuses to provide preauthorization. The doctors will not proceed with the treatment without the preauthorization, and the insurer, claiming no actual legal obligation to provide a preauthorization, refuses to provide one.

The insurers argue that since bills for accepted claims must be paid, and there is no specific requirement that preauthorization be provided, preauthorization is not necessary. This results in medical providers refusing to provide services as they are concerned that the insurer may refuse to pay for services after the service is provided, despite the provisions of the law that the bill must be paid. Second opinions are usually obtained through out-of-state itinerant doctors and may take months to obtain, and even then, insurers will not issue preauthorization. In other words, while purporting to have accepted the claim, the insurer/employer is in fact intimidating and/or chilling medical providers into not providing services for fear that the bills will not be paid.

This practice has been the subject of numerous cases and most recently the Alaska Supreme Court has agreed with the Alaska Workers Compensation Board that this practice is unlawful and amounts to a controversy because payments for medical services are essentially payable under Alaska law at the time the services are prescribed. Nevertheless, insurers continue to engage in these practices, and the worst bit is that faced with the fact that these companies are simply thumbing their noses at Alaskan workers, the previous Administration knowingly determined to take no action with respect to this conduct.

The current Administration argued that any solution should be statutory, and with the Supreme Court decision in Bockus (attached), the Department included in this session's Omnibus Bill, HB79) a provision that would require preauthorization where the claim is not contested. This modest correction of our statutes is critical in order to ensure that the intent of the underlying law is addressed. The current loophole affords insurers an unholy and wholly unacceptable opportunity to delay treatment, in the ghoulish anticipation that treatment will become unnecessary (death comes to us all, eventually).

Fix this, please.

Marc Grober, Esq.

p.s. I have also made the attachments available here:

<http://alaskapolicy.net/PublicRecords/HB79/>

This directory includes the Workers Comp Board Bockus decision and the eventual Supreme Court ruling on it, the Kamitchis Board decision and the M-K River Supreme Court decision, all pertinent to any discussion of the preauthorization issue.



To: The Honorable Governor Bill Walker

From: American Insurance Association
National Association of Mutual Insurance Companies
Property Casualty Insurers Association of America

Re: SB 40 and HB 79 Worker's Compensation Bills

Position: **SUPPORT**

The above-named trades are pleased to support SB 40 and HB 79, which streamline procedures in the worker's compensation and reduce the occasions of employees going without coverage. The measures, among other things, eliminate the second injury fund on a prospective basis, provide more clarity in defining a worker as an employee or independent contractor, allow payments by debit card or electronic funds transfer, strengthen penalties on premium fraud and misclassification of employees, and clarify a medical provider's requirement to provide a written request for medical treatment. These measures provide notable improvements to Alaska's worker's compensation system that alleviate unnecessary friction and costs in the system.

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Finally, we endorse the repeal of the Alaska Second Injury Fund. The legislation would repeal the second injury fund on a going forward basis. Second injury funds are inconsistent with the

principle that costs should be internalized and, instead, require that all employers subsidize, via the assessment, benefits paid to claimants who were injured at another employer's workplace.

The trades would note that under the bill Sec 32. AS 23.30.240 appears to change the existing language that makes officers considered employees until opting *out*, to instead flipping the presumption that officers are not employees if they have at least 10% and otherwise have to opt *in*. The trades are fine with the change, however, because of operational requirements, such as the need to change forms, programming and procedures to reflect this change, there is a risk of impacting existing policies mid-term. Therefore, we would ask for a delayed implementation date of a year and ensure it applies to renewals or new policies. We have seen significant problems when similar changes have taken place in other states without an implementation period.

For these reasons, we are pleased to support these measures and thank you for your efforts to improve the worker's compensation system.

GRIFFARD STEEL, INC.

Specializing in Steel Erection and Fabrication since 1977!

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2650 Phillips Field Rd.
Fairbanks, AK 99707-1416
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Fax 907.479.0635
B.L.#085768
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March 13, 2017

House of Labor and Commerce,

I am writing to you in support of HB79. I am a Structural Steel contractor that has been in business in Fairbanks, AK for 40 years. In this time, I have noticed that through the bidding process, "independent contractors" seem to have an unfair advantage in times of economic downturn. I believe the reason for this is that they are not reporting their employee's worker compensation classifications correctly.

After review of HB79 I feel that the language in this bill would make it fair for construction contractors state wide because the misclassification through "independent contractors" is so staggering. The HB79 gives the fitting consequences to anyone that would want to misclassify their workers as "independent Contractors". With the financial crisis that the state is in, this bill would help bring in revenue that should be going to the state anyway.

Sincerely,



JD Wilkerson
President
Griffard Steel, Inc.



To: House Labor and Commerce Committee
RE: HB79

I am a state wide General Contractor in Alaska. I am in support of HB79 for the following reasons:

HB79 will level the playing field when it comes to competitive bidding and contractors having and bidding with the correct worker's comp rate.

The enforcing agents need the tools to enforce the law as well as the proper protocol for punishment befitting the crime. I have witnessed less than lackluster contractors under bid substantially with the idea of turning around and misclassifying their employees as Independent contractors. This eliminates the Workers comp rate completely. In the line of work that I am in, structural steel erection is the 5th most dangerous job every year. The idea that men and women might be doing this work without worker's comp is mind boggling to me. Once again, I am in support of this bill.

Pat Whalen
President
Whalen Construction, INC.



2964 Commercial Drive
Anchorage, AK 99501

(907) 258-2425 Fax: (907) 278-8018

March 14, 2017

Subject: HB 79 Independent Contractors working Davis-Bacon Projects

To whom it may concern:

As a contractor who bids competitively on many Publicly Funded Contracts it has been distressing to see the number of so called independent contractors competing against us by banding together under a single contractor who submits a bid representing himself as a subcontractor or general contractor using these individuals as his work force. These so called independents do not carry Workman's Compensation Insurance and are required to pay their own taxes and SS costs which gives the general contractor or coordinating subcontractor a huge advantage in cost. They also are not required to pay themselves the wages called for under the Davis-Bacon Regulations. They are operating within the limits of law on paper but in the field they are frequently supplied tools, lifts, materials, etc. and given direction as to when and where they will work by the individual who has the basic contract.

Technically, they are liable for anything that occurs to them personally while on the job but the fact is they have no insurance to cover themselves if injured while they work.

As general contractor, I am required by law to have Worker's Compensation Insurance on my people. Any legitimate subcontractor working for me is also required to have this coverage. Only an independent contractor can opt not to have this coverage but he must be independent in the sense that he has his own tools, supplies his own materials, trucks, lifts, etc. and works totally independent (by himself) on whatever job he contracts.

By joining forces as a team in the field, these individuals that do not have the insurance and tax costs like the rest of us can bid as much as 30% below us. The irony of this is if they are injured on the job you can be sure that the rest of us will ultimately end up paying for their care under some program.

These misclassified workers are raising havoc in the construction market and are forcing those of us who are following the law into extremely difficult positions. This is why it is so important that Bill HB-79 regulating these conditions be introduced and passed.

Sincerely,

K-C CORPORATION


Byron D. Kohfeld
President



2964 Commercial Drive
Anchorage, AK 99501

(907) 258-2425 Fax: (907) 278-8018

March 14, 2017

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As a contractor who bids competitively on many Publicly Funded Contracts it has been distressing to see the number of so called independent contractors competing against us by banding together under a single contractor who submits a bid representing himself as a subcontractor or general contractor using these individuals as his work force. These so called independents do not carry Workman's Compensation Insurance and are required to pay their own taxes and SS costs which gives the general contractor or coordinating subcontractor a huge advantage in cost. They also are not required to pay themselves the wages called for under the Davis-Bacon Regulations. They are operating within the limits of law on paper but in the field they are frequently supplied tools, lifts, materials, etc. and given direction as to when and where they will work by the individual who has the basic contract.

Technically, they are liable for anything that occurs to them personally while on the job but the fact is they have no insurance to cover themselves if injured while they work.

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By joining forces as a team in the field, these individuals that do not have the insurance and tax costs like the rest of us can bid as much as 30% below us. The irony of this is if they are injured on the job you can be sure that the rest of us will ultimately end up paying for their care under some program.

These misclassified workers are raising havoc in the construction market and are forcing those of us who are following the law into extremely difficult positions. This is why it is so important that Bill SB-40 regulating these conditions be introduced and passed.

Sincerely,

K-C CORPORATION


Byron D. Kohfield
President

HB 79 miss classification

I own a small saw mill here in thorne bay. I am the product of laws not being enforced or else being unenforceable including in a big way workers comp.

I have a more than a 35 year history of owning 'above board business' including sawmills. Before that I was involved in equal ownership joint ventures periodically salvaging western red cedar during high school and winters off while managing logging companies near Homer and Prince William Sound in the 70s. I understand how both types of business' models work. I seek out agencies and laws that apply to me and the business I'm in. I use an in state CPA for all payroll and payroll law advice. An in state attorney when needed to catch any thing I might not that is required by laws. I listen to them as is expected of me.

Due to a failed logging and lumber business in the late 80s in Oregon I know clearly the wrath of the IRS, Oregon department of revenue and workers comp. No grace for the times or circumstances. We had provided 20-40 year around family wage jobs for 8 years with benefits including health insurance. For a couple of years we were one of the highest contributing members of Associated Oregon Loggers state wide to their workers comp program . I was years working my way through that issue.

in April of 1995 the state Alaska DNR sold phase one of Goose Creek Industrial Park, 17 heavy industrial parcels ranging from 5-11 acres. Every one of us bidders received bid packets that included complete information on requirements of employers to operate a business in Alaska including workers comp, and corp of engineers requirements. Every single lot sold in a bidding frenzy, some for many times appraised value. DNR quickly put out 8 more lots as big as 20 acres. Most also sold fast and furious.

For the next few years Both the USDA and State of Alaska sponsored well attended by most of the buyers, presentations on how to conduct business .

Within about a year several of us had developed to a point we could conduct business. A couple of us blasted rock, others hauled rock, some basically set up on the streets.

Until around 1998-99 the under the table bunch did not affect my business appreciably and they looked real loosely like they could be Joint Ventures. Ketchikan Pulp was largely their log source but KP was shutting down so they had started to buy timber sales and were driving up prices for a very limited supply of timber. I survived for a while because I was a better judge of timber Quality and only bought the best of what was offered. But when the volume went down I was left stranded with out timber.

Some of the additional savings for those that would chose to be under the table Thieves :
IRS Social Security tax and withholding Unemployment tax and withholding Food stamps
as part of wages overtime pay Workers Comp insurance The Free SERCC Clinic for

work and home Public Welfare as part of wages, Child Support Withholding (I have personally had to pay this one when my bookeeper forgot to withhold and the employee quit and drew up before it was caught.) any Other payroll deductions , Local taxes for fuel etc.,

About 2000-1 I began asking Worker Comp to come to Prince of Wales and assist those that had missed reading or researching the requirements to operate a business in Alaska.

In Workers Comps defense, they always seemed to have been allotted no travel dolors, They were short handed, the under the table bunch were my neighbors and friends so I would not name them.

Former employees of under the table companies have told me they had to be on food stamps year around because of low take home pay and then they had to be on welfare also during shutdowns with no unemployment benefit available. They used the free clinic for health care and work injuries for free or near free because their income was so low, no copay.

I have watched fuel being pumped into tanks and equipment in wide spots across the street from city limits to avoid local sales taxes. Workers comp insurance is just the beginning of the savings to be had for these criminals once it starts.

Several of these industrial lots still use the city streets as if they were their own log, lumber , and junkyard. Most Every other lot is bigger than the 5 acre that I bought. I was able to get off the street that I had also reconstructed in the process within days and long before business began. 22 years later, come on, its time to grow up.

The lack of inter agency cooperation is unreal.

The US Forest Service tells me they can not consider disbarment without a conviction, fraud or felony would would do.

It would seem that there would be liability for them and for that matter any land owner that never required Proof of insurance . I can not allow another business on my property without proper proof of insurance protection for us.

A lot of serious injuries requiring investigations happen remotely and the investigators don't get to see the rest of our island.

A few years back a couple of business' on the road system here in Thorne Bay had injuries that required workers comp investigations of those companies. Neither had comp coverage and one never even had a license to do business in Alaska. The latter was even "vetted" by the Forest Service and somehow passed inspection.

On those trips it was discovered that a lot of high risk business' were located here and only a couple of us had Workers Comp. A team of investigators returned later and delivered what amounted to slaps on the wrists. That was the tools Workers comp had to work with it seems.

I was legal so guess who's fault it is that crimes were committed. I've been told I caused at least 1 heart attack and I have had my life threatened.

Presently it's been over 7 years since I have been high bidder on a timber sale. I continue to bid on the good ones.

In order to put \$18 in my employees pocket like the higher paying under the table bunch were paying at one time I had to pay \$24 to cover my employees taxes. This meant My at the time \$52 logging rate for workers comp costs me \$12 more per hour plus the extra \$6 used to cover employees taxes total \$18 extra per hour, twice their cost. Not included are ficca, un-employment insurance and bookeeping and more.

The USFS and Alaska DNR appraisals both allow for profit after paying all bills and obeying all laws but not enough to allow me to pay more than double for my biggest expense beyond raw materials, my employees.

Maybe I have wrongly believed that I am responsible to provide a decent living for my employees and protection for them and their families and for potentially a very long time .

In the meantime I have been forced to sell paid for properties and assets to hang on to a promise I made to a local bank. We still hang on, however I am 67 years old ,we have lost a sizable chunk of our retirement nest eggs to in effect finance these criminals. I ask for fairness. I know and accept that I will have to be working hard at 75 years and beyond if the Lord allows. I was at the right place at the right time with the right skills and the right plan to make jobs happen.

A few months ago, soon after I was outbid by two under the table operators , one of them was quoted as saying "I think we have finally put Ernie out of business". Both of these men were helped through some tough times by me, I don't deserve that. They seem to believe My being a legitimate business was the reason they got scolded for being illegitimate businesses.

The state of Alaska has lost more money than me, they have had to pick up the tab on many fronts sometimes maybe with some federal help.

I have reviewed the suggested changes in HB 79. The changes seem to further clarify the intent of what should be a moral obligation to begin with.

Most Important

No matter how many laws we have, minus enforcement funding, and sufficient personnel, they are just useless data.

Fraud enforcement more than pays its own way.

Possible sources of revenue or assistance to help defray costs of enfourcement might be; Social Security Administration Unemployment insurance division Food Stamps IRS Welfare System

Child support collections, And other agencies USFS DNR Most of these agencies have been defrauded also and would at least benefit profitably.

A few front page convictions will yield Alaska substantial cost recovery, likely 100%, followed by long term savings and revenue.

On serious intentional cases it should be required that All arrears to all agencies be collected before being allowed to be an employer again, liquidating a few ill gained assets to catch up would seem necessary if not just. A few 3 year disbarments by the DNR and or USDA and other agencies would have people talking and complying in my industry.....all industries.

lastly

Viking Lumber told me years ago that more than 2 dozen companies and people were vetted before they could operate the Klawock mill when they bought it. Weyerhaeuser had committed antitrust fraud there. Viking had sold Weyerhaeuser chips and sold and bought logs from them in Washington state. The USFS was making sure there were no business ties to Weyerhaeuser. This too is part of enforcement to make sure that the cards don't just get reshuffled.

Ernie eads

Thank you for listening to me,
Can I try to answer any questions?
