

CS FOR SENATE BILL NO. 323(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 4/16/04

Referred: Rules

Sponsor(s): SENATOR SEEKINS

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to a subcontractor's, contractor's, and project owner's liability for**
2 **workers' compensation, to sole proprietors and partnerships without employees, and to**
3 **the exclusiveness of liability for workers' compensation."**

4 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 * **Section 1.** AS 23.30.045(a) is amended to read:

6 (a) An employer is liable for and shall secure the payment to employees of the
7 compensation payable under AS 23.30.041, 23.30.050, 23.30.095, 23.30.145, and
8 23.30.180 - 23.30.215. If the employer is a subcontractor **and fails to secure the**
9 **payment of compensation to its employees**, the contractor is liable for and shall
10 secure the payment of the compensation to employees of the subcontractor. **If the**
11 **employer is a contractor and fails to secure the payment of compensation to its**
12 **employees or the employees of a subcontractor, the project owner is liable for**
13 **and shall secure the payment of the compensation to employees of the contractor**
14 **and employees of a subcontractor, as applicable** [UNLESS THE

1 SUBCONTRACTOR SECURES THE PAYMENT].

2 * **Sec. 2.** AS 23.30.045(f)(1) is amended to read:

3 (1) "contractor" means a person who undertakes by contract
4 performance of certain work for another **but does not include a vendor whose**
5 **primary business is the sale or leasing of tools, equipment, other goods, or**
6 **property**; and

7 * **Sec. 3.** AS 23.30.045(f) is amended by adding a new paragraph to read:

8 (3) "project owner" means a person who, in the course of the person's
9 business, engages the services of a contractor and who enjoys the beneficial use of the
10 work.

11 * **Sec. 4.** AS 23.30.045 is amended by adding new subsections to read:

12 (g) Notwithstanding (a) of this section, a project owner, contractor, or
13 subcontractor is not liable for and is not obligated to secure the payment of
14 compensation to a sole proprietor or member of a partnership if the sole proprietor or
15 member of a partnership agrees in writing that the project owner, contractor, and
16 subcontractor do not, in regard to the sole proprietor or member of a partnership, have

17 (1) an obligation to secure compensation; and

18 (2) liability for compensation payable under AS 23.30.041, 23.30.050,
19 23.30.095, 23.30.145, and 23.30.180 - 23.30.215.

20 (h) A sole proprietor or member of a partnership who has agreed under (g) of
21 this section may not maintain an action against the project owner, contractor, or
22 subcontractor, or an insurer of the project owner, contractor, or subcontractor, at law
23 or in admiralty for damages on account of injury or death.

24 * **Sec. 5.** AS 23.30.055 is amended to read:

25 **Sec. 23.30.055. Exclusiveness of liability.** The liability of an employer
26 prescribed in AS 23.30.045 is exclusive and in place of all other liability of the
27 employer and any fellow employee to the employee, the employee's legal
28 representative, husband or wife, parents, dependents, next of kin, and anyone
29 otherwise entitled to recover damages from the employer or fellow employee at law or
30 in admiralty on account of the injury or death. The liability of the employer is
31 exclusive even if the employee's claim is barred under AS 23.30.022. However, if an

1 employer fails to secure payment of compensation as required by this chapter, an
2 injured employee or the employee's legal representative in case death results from the
3 injury may elect to claim compensation under this chapter, or to maintain an action
4 against the employer at law or in admiralty for damages on account of the injury or
5 death. In that action the defendant may not plead as a defense that the injury was
6 caused by the negligence of a fellow servant, or that the employee assumed the risk of
7 the employment, or that the injury was due to the contributory negligence of the
8 employee. **In this section, "employer" includes, in addition to the meaning given**
9 **in AS 23.30.395, a person who, under AS 23.30.045(a), is liable for or potentially**
10 **liable for securing payment of compensation.**