

CS FOR SENATE BILL NO. 323(JUD) am
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Amended: 4/20/04

Offered: 4/16/04

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**
3 **managers or managing members of limited liability companies, and to the exclusiveness**
4 **of liability for workers' compensation."**

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

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

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

1 and employees of a subcontractor, as applicable [UNLESS THE
2 SUBCONTRACTOR SECURES THE PAYMENT].

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

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

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

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

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

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

21 (1) an obligation to secure compensation; and

22 (2) liability for compensation payable under AS 23.30.041, 23.30.050,
23 23.30.095, 23.30.145, and 23.30.180 - 23.30.215.

24 (h) A sole proprietor, member of a partnership, or manager or managing
25 member of a limited liability company who has agreed under (g) of this section may
26 not maintain an action against the project owner, contractor, or subcontractor, or an
27 insurer of the project owner, contractor, or subcontractor, at law or in admiralty for
28 damages on account of injury or death.

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

30 **Sec. 23.30.055. Exclusiveness of liability.** The liability of an employer
31 prescribed in AS 23.30.045 is exclusive and in place of all other liability of the

1 employer and any fellow employee to the employee, the employee's legal
2 representative, husband or wife, parents, dependents, next of kin, and anyone
3 otherwise entitled to recover damages from the employer or fellow employee at law or
4 in admiralty on account of the injury or death. The liability of the employer is
5 exclusive even if the employee's claim is barred under AS 23.30.022. However, if an
6 employer fails to secure payment of compensation as required by this chapter, an
7 injured employee or the employee's legal representative in case death results from the
8 injury may elect to claim compensation under this chapter, or to maintain an action
9 against the employer at law or in admiralty for damages on account of the injury or
10 death. In that action the defendant may not plead as a defense that the injury was
11 caused by the negligence of a fellow servant, or that the employee assumed the risk of
12 the employment, or that the injury was due to the contributory negligence of the
13 employee. **In this section, "employer" includes, in addition to the meaning given**
14 **in AS 23.30.395, a person who, under AS 23.30.045(a), is liable for or potentially**
15 **liable for securing payment of compensation.**