

SB

181

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y STATE CAPITOL  
JUNEAU, ALASKA 99811  
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 13, 1987

SUBJECT: Workers' compensation - SB 181  
TO: Senator Richard Eliason  
FROM: Michael F. Ford *M.F.*  
Legislative Counsel

You asked for an explanation of the differences between the existing AS 23.30.240 and the section as repealed and re-enacted in SB 181. Existing law provides that an officer of a corporation, other than a municipal or nonprofit corporation, is an employee for purposes of workers' compensation unless the employee waives coverage. An officer of a municipal or nonprofit corporation may be covered as an employee, if the corporation elects to include the officer.

Under the repealed and reenacted section, an officer of a corporation, other than a municipal or nonprofit corporation, is not considered an employee for purposes of workers' compensation, unless the officer elects to be covered. As to municipal or nonprofit corporations, there is no substantive change in the law. The municipal or nonprofit corporation may still insure an officer as an employee for purposes of workers' compensation, in the same manner as occurs under the existing AS 23.30.240.

MFF:mkr  
m9/141



## Senate Rules Committee

Senator Richard I. (Dick) Eliason, Chairman

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An act ~~is~~ relating to  
including corporate  
officers as employees  
for the purposes of  
workers' compensation.

(tighter title)

For an Act entitled:

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

\* Section 1. AS 23.30.240 is repealed and re-enacted to read:

Sec. 23.30.240. Executive officers of corporations, municipal corporations, and nonprofit corporations as employees. (a) An executive officer of a corporation, other than an executive officer of a municipal corporation or a charitable, religious, educational, or other nonprofit corporation, is an employee of the corporation for the purposes of this chapter. However, notwithstanding AS 23.30.245(b), an executive officer of a corporation may elect to waive coverage under this chapter. If the executive officer does so elect, the executive officer shall provide written notice of the election to the insurer of the corporation by certified mail. Such notice shall become effective the day following receipt of the notice by the insurer. When notice is provided with an initial application for coverage the election is effective concurrent with coverage provided by the insurer. If all executive officers of a corporation are eligible to waive coverage and there are no other employees, the election shall be accomplished by notice to the commissioner.

(b) An executive officer's election to waive coverage under the provisions of this chapter shall continue in effect so long as the corporation insurance policy is in effect or until the executive

officer, by written notice to the corporation insurer, revokes the election to waive that coverage.

(c) An executive officer of a municipal corporation or of a charitable, religious, educational, or other nonprofit corporation may be brought within the coverage of its insurance contract by the corporation by specifically including him in the contract of insurance. The election to bring an executive officer within the coverage continues in force for the period the contract of insurance is in effect. During that period an executive officer brought within the coverage of the insurance contract is an employee of the corporation under this chapter.

(d) Nothing in this section shall be construed to limit the responsibility of corporations to provide insurance coverage for their employees as required elsewhere in this chapter. An election to waive insurance coverage pursuant to this section may not be made a condition of employment.

(e) For the purpose of this section, an "executive officer" of a corporation, other than a municipal corporation or a charitable, religious educational, or other nonprofit corporation, means the president, vice-president, secretary, or treasurer who is an owner of at least fifteen percent of the stock of the corporation, as attested to by the secretary of the corporation, at the time of the election and at the time of the injury.

To: Mark Johnson  
From: Don Koch

For an Act entitled: "An Act relating to workers' compensation."

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

\* Section 1. AS 23.30.240 is repealed and re-enacted to read:

Sec. 23.30.240. Officers of corporations, municipal corporations, and nonprofit corporations as employees. (a) An executive officer of a corporation, other than an officer of a municipal or nonprofit corporation, is an employee of the corporation for the purposes of this chapter. However, notwithstanding AS 23.30.245(b), an executive officer of a corporation may elect to waive coverage under this chapter. If the executive officer does so elect, the officer shall provide written notice of the election to the insurer of the corporation by certified mail. Such notice shall become effective the day following receipt of the notice by the insurer. WHEN NOTICE IS PROVIDED WITH AN INITIAL APPLICATION FOR COVERAGE, THE ELECTION IS EFFECTIVE CONCURRENT WITH COVERAGE PROVIDED BY THE INSURER. IF ALL EXECUTIVE OFFICERS OF A CORPORATION ARE ELIGIBLE TO WAIVE COVERAGE AND THERE ARE NO OTHER EMPLOYEES, THE ELECTION SHALL BE ACCOMPLISHED BY NOTICE TO THE ~~INSURER~~ COMMISSIONER.

(b) An executive officer's election to waive coverage under the provisions of this chapter shall continue in effect so long as the corporate insurance policy is in effect or until the executive officer, by written notice to the corporate insurer, revokes the election to waive that coverage.

Proposed by DOL

- use term "executive officer" as it is consistent with other lang - existing lang  
- keep lang for non-profit corporation

Bill No. Senate Bill No. 181

Date March 17, 1987

Title "An Act relating to Workers' Compensation."

Contact: J. L. McClintock  
465-2790

This bill would exempt any officer of a for-profit corporation from workers' compensation coverage on the basis the officer would not be considered to be an employee, unless the officer specifically elected to be an employee for purposes of obtaining workers' compensation coverage.

Under current law an executive officer of a for-profit corporation is an employee for purposes of workers' compensation coverage unless the executive officer specifically waives coverage, subject to approval by the Commissioner of Labor. For an exemption to be approved by the commissioner, the executive officer must be elected or appointed and empowered in accordance with the charter and by-laws of a corporation and must petition the commissioner for a waiver. The petition must include:

- (1) proof of incorporation;
- (2) a copy of the minutes of the corporate meeting at which the petitioner was elected or appointed as an executive officer;
- (3) a verified statement signed by the petitioner stating an intent to waive coverage under the Act;
- (4) the petitioner's name, address, and title; and
- (5) a copy of the articles of incorporation and bylaws.  
(8 AAC 45.184)

Upon receipt of the petition and required documents, the waiver is usually approved by the commissioner.

The major difference between the provisions of this bill and current law is that under this amendment the officers are not covered unless they opt in under the Alaska Workers' Compensation Act, whereas they are now covered unless they opt out. The department's primary objection to this bill is that it removes all elements of an awareness requirement on the part of employees who may not realize or have not been informed that by assuming the title of "officer" they have relinquished all right to workers' compensation benefits under the Act for themselves or their beneficiaries. Despite the fact that most petitions for executive officer waivers are approved if all supporting paperwork is submitted, the current process does assure that employees are fully aware they are waiving all future rights to workers' compensation benefits as executive officers.

The department also opposes the bill as written because it broadens the exemption from "executive officer" to the more vague title of "officer." Fletcher, Cyclopedia of Corporations, § 269.1 at page 28-29, states: "The

**POSITION PAPER/Department of Labor**

president, vice-president, secretary and treasurer are commonly regarded as the principal or executive officers of a corporation, and the modern corporation statutes usually specifically designate them as the officers of a corporation." An "officer" of a corporation can include lower level officials with little or no influence in the actual running of the business operation. The bill also removes any statutory reference that the executive officer must be elected or appointed and empowered in accordance with the bylaws of a corporation.

Because of the increase in executive officer waiver requests over the past five years, this subject was an agenda item at the September 1986 statewide meeting of the Alaska Workers' Compensation Board. The board expressed concerns over the growing trend of small Alaska employers to include all of their employees as executive officers when, in fact, they are not bona fide officers of the corporation, to escape liability for workers' compensation coverage. This not only creates an unfair competitive market for those employers who comply with the provisions of the Act and pay premiums accordingly, but could also result in the liability of a subcontractor reverting to the prime contractor if exempted employees were found not to be bona fide executive officers. (See AS 23.30.045(a)). It was, therefore, the majority vote of the board that legislation be submitted to prohibit waivers altogether for executive officers of for-profit corporations. This is consistent with what appears to be a growing trend with other jurisdictions to eliminate executive officer waivers from workers' compensation laws or to more clearly delineate those employees who are bona fide executive officers of a corporation. According to Larson's, Workmen's Compensation Law, § 54.21(a) at page 9-218:

Under modern compensation law, the fact that a claimant is a corporate officer does not in itself bar him from recovering workmen's compensation benefits, and the normal rule must now be taken as holding that corporate executives are covered by the act.

While elimination of waivers remains the board's first choice, we also offer alternative language that would appear to not only satisfy the board's and department's concerns, but perhaps the concerns of the proponents of SB 181.

Under the department's proposed language, the executive officer is an employee unless the officer waives coverage. If the officer does elect to waive coverage the officer gives written notice to the insurer and the notice becomes effective the day following receipt by the insurer. This accomplishes three objectives: The executive officer is still considered an employee, consistent with most jurisdiction's workers' compensation laws; the waiver of coverage becomes effective immediately; and the process is entirely between the employer and insurer with no involvement at this level by the department. The burden would rest with the insurer who has a vested interest to assure that waiver of coverage under the executive officer provisions is bona fide. The proposed language more clearly delineates those employees who may be considered executive officers by specifically naming the offices to be held and by requiring stock ownership as an

indicator of bona fide executive officer status. Lastly, it provides that the effective dates of the waiver coincide with the effective dates of the corporate insurance policy, or until the executive officer revokes the election to waive coverage.

In summary, we feel the department's alternative language better serves the needs of the employer, better protects the rights of the employee, and minimizes the abuse and litigation that could result from enactment of SB 181.

APPROVED:



Jim Sampson, Commissioner  
Department of Labor

For an Act entitled: "An Act relating to workers' compensation."

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

\* Section 1. AS 23.30.240 is repealed and re-enacted to read:

Sec. 23.30.240. Officers of corporations, municipal corporations, and nonprofit corporations as employees. (a) An executive officer of a corporation, other than an officer of a municipal or nonprofit corporation, is an employee of the corporation for the purposes of this chapter. However, notwithstanding AS 23.30.245(b), an executive officer of a corporation may elect to waive coverage under this chapter. If the executive officer does so elect, the officer shall provide written notice of the election to the insurer of the corporation by certified mail. Such notice shall become effective the day following receipt of the notice by the insurer.

(b) An executive officer's election to waive coverage under the provisions of this chapter shall continue in effect so long as the corporate insurance policy is in effect or until the executive officer, by written notice to the corporate insurer, revokes the election to waive that coverage.

(c) An executive officer of a municipal or nonprofit corporation may, at the election of the municipal or nonprofit corporation, be insured for purposes of this chapter. A municipal or nonprofit corporation that elects to include an executive officer within its insurance policy shall continue to insure the officer until the insurance policy is terminated.

(d) Nothing in this section shall be construed to limit the responsibility of corporations to provide insurance coverage for their employees as required elsewhere in this chapter. An election to waive insurance coverage pursuant to this section may not be made a condition of employment.

(e) For the purpose of this section, an "executive officer" of a corporation, other than a municipal or nonprofit corporation, means the president, vice-president, secretary, or treasurer who is an owner of at least fifteen percent of the stock of the corporation, as attested to by the secretary of the corporation at the time of the election.

**STATE OF ALASKA 1987 LEGISLATIVE SESSION  
FISCAL NOTE**

Bill Version: SB 181  
Publish Date: \_\_\_\_\_

**REQUEST:** \_\_\_\_\_

Revision Date: \_\_\_\_\_  
Title: "An Act relating to workers' compensation."  
Sponsor: Eliason and Binkley  
Requestor: Senate Labor and Commerce

Agency Affected: Labor  
BRU: Workers' Compensation  
Components: Workers' Compensation

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES		(6.5)	(6.5)	(6.5)	(6.5)	(6.5)
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0</b>	<b>(6.5)</b>	<b>(6.5)</b>	<b>(6.5)</b>	<b>(6.5)</b>	<b>(6.5)</b>
<b>CAPITAL</b>						
<b>REVENUE</b>						

**FUNDING: (Thousands of Dollars)**

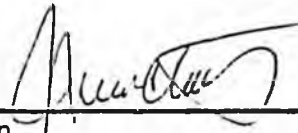
GENERAL FUND		(6.5)	(6.5)	(6.5)	(6.5)	(6.5)
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	<b>0</b>	<b>(6.5)</b>	<b>(6.5)</b>	<b>(6.5)</b>	<b>(6.5)</b>	<b>(6.5)</b>

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

**ANALYSIS :** (Attach a separate page if necessary)

(See attached)

Prepared by: <sup>MB</sup> Jacquelyn McClintock  Phone: 465-2790  
Division: Workers' Compensation Date: 3/17/87

Approved by Commissioner: <sup>MB</sup> Jim Sampson  Date: 3/17/87  
Agency: Labor

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)
- Senate Secretary

## Fiscal Note Analysis

SB 181

This bill would exclude certain corporate officers from the provisions of Workers' Compensation. In doing this, the workload to the Department would be marginally decreased. We estimate 20% of a Clerk-Typist III's time would be saved. This equates to \$6,500 per year.

*1st draft*

Original sponsors: Eliason and Binkley

IN THE SENATE

BY THE LABOR AND  
COMMERCE COMMITTEE

CS FOR SENATE BILL NO. 181 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act allowing certain corporate executive officers to become employees for purposes of workers' compensation."

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

\* Section 1. AS 23.30.240 is repealed and re-enacted to read:

Sec. 23.30.240. CORPORATE EXECUTIVE OFFICERS AS EMPLOYEES. (a) An executive officer of a corporation, other than an executive officer of a municipal or nonprofit corporation, is an employee of the corporation for the purposes of this chapter. Notwithstanding AS 23.30.245(b), an executive officer who is the president, vice-president, secretary, or treasurer of a corporation and who owns at least 15 percent of the stock of the corporation may elect to waive coverage required under this chapter. If the executive officer elects to waive coverage, the officer shall provide written notice of the election to the insurer of the corporation by certified mail. The waiver is effective the day after receipt of the notice by the insurer, except that if notice is provided with an initial application for coverage the election is effective concurrent with coverage provided by the insurer. If all the executive officers of a corporation are eligible to waive coverage and are the corporation's only employees, the election under this subsection shall be made by written notice to the commissioner. *(The waiver is effective the day after receipt of the notice by the commissioner.)*

*Added*

(b) An executive officer's election to waive coverage under (a) of this section continues in effect as long as the corporation's

*A. 1. 1. 1.*  
insurance policy is in effect or until the officer { by written notice to the insurer if there is an insurer of the corporation, or to the commissioner if there is no insurer of the corporation, revokes the election to waive coverage. }

(c) An executive officer of a municipal or nonprofit corporation may be brought within the coverage of the corporation's insurance contract if the corporation specifically includes the executive officer in the contract of insurance. The election to bring an executive officer within the coverage continues in force for the period the contract of insurance is in effect. During that period, an executive officer brought within the coverage of the insurance contract is an employee of the corporation for purposes of this chapter.

(d) This section does not limit the responsibility of a corporation to provide insurance coverage for an employee as required by this chapter. An election to waive insurance coverage under (a) of this section may not be made a condition of employment.

*Now*  
(e) All executive officer waivers existing prior to the effective date of this legislation shall continue in effect until the expiration date of the current corporation insurance policy, or if there is no corporation insurance policy, until the election to waive coverage is revoked.

5-0779B  
Ford  
3/30/87

Original sponsors: Eliason and Binkley

IN THE SENATE

BY THE LABOR AND  
COMMERCE COMMITTEE

CS FOR SENATE BILL NO. 181 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - FIRST SESSION

A BILL

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(b) An executive officer's election to waive coverage under (a) of this section continues in effect as long as the corporation's

insurance policy is in effect or until the officer, by written notice to the insurer if there is an insurer of the corporation, or to the commissioner if there is no insurer of the corporation, revokes the election to waive coverage.

(c) An executive officer of a municipal or nonprofit corporation may be brought within the coverage of the corporation's insurance contract if the corporation specifically includes the executive officer in the contract of insurance. The election to bring an executive officer within the coverage continues in force for the period the contract of insurance is in effect. During that period, an executive officer brought within the coverage of the insurance contract is an employee of the corporation for purposes of this chapter.

(d) This section does not limit the responsibility of a corporation to provide insurance coverage for an employee as required by this chapter. An election to waive insurance coverage under (a) of this section may not be made a condition of employment.

(e) All executive officer waivers existing prior to the effective date of this legislation shall continue in effect until the expiration date of the current corporation insurance policy, or if there is no corporation insurance policy, until the election to waive coverage is revoked.