

SB

1944

Original sponsor: Jones

1 IN THE SENATE

2 CS FOR SENATE BILL NO.194 ()
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FIFTEENTH LEGISLATURE - FIRST SESSION
5 A BILL

6 For an Act entitled: "An Act excluding services provided by certain taxi-
7 cab operators from the definition of employment for
8 unemployment compensation coverage; and providing for
9 an effective date."

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

11 * Section 1. AS 23.20.526(a) is amended by adding a new paragraph to
12 read:

13 (23) service performed under contract as a taxicab operator.

14 * Sec. 2. This Act takes effect immediately under AS 01.10.070(c).
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ALASKA STATE LEGISLATURE


Home Address
3813 Denali Street
Ketchikan, AK 99901
907-225-9082

While in Juneau
P.O. Box V
Juneau, AK 99811
907-465-3743

Senator Lloyd Jones

MEMORANDUM

TO: Senate Labor and Commerce Committee

FROM: Senator Lloyd Jones 

DATE: March 27, 1987

SUBJECT: Senate Bill 194, exempting taxicab from unemployment compensation.

This bill would simply exclude an independent operator of a taxicab from the definition of employment.

This measure is intended to continue a model agreement which has existed between taxi operators, who have historically operated as independent contractors, and taxi companies, which have contracted for these services. This agreement, I have been informed, was the brainchild of an Anchorage taxi firm and was adopted by two Ketchikan taxicab companies.

From 1981 until 1985 this agreement was in effect for the Yellow Cab Company in Ketchikan. The Department of Labor was aware of it and expressed no objection. In April of 1985, the department changed its position and declared, in effect, the cab operators were subject to the definition of employment. And should be considered employees.

It was my hope a solution could be worked out outside of a statutory change, however, that appears to be unworkable.

I would appreciate your support of this legislation, so that the cab companies and independent cab operators could continue their previously successful cooperative business endeavor.

STATE OF ALASKA

DEPARTMENT OF LABOR

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

P.O. BOX 1149
JUNEAU, ALASKA 99802
PHONE: (907) 465-2700

April 1, 1987

Honorable Tim Kelly, Chairman
Labor and Commerce Committee
Alaska State Senate
Pouch V
Juneau, AK 99811

Dear Senator Kelly:

In response to the question raised at the Labor and Commerce Committee's March 27, 1987 hearing on Senate Bill 194, the average unemployment insurance tax rate for taxicab operators in 1987 is 4.63% (employer share = 4.03%; employee share = .6%). This rate is applicable to the first \$21,500 earned by each employee.

Also, enclosed is a summary of the criteria used by the Workers' Compensation Board in making independent contractor status determinations, which the committee also requested.

If you have any questions concerning this, please let me know.

Sincerely,



Eileen Plate
Legislative Liaison

Enclosure

Criteria Applied in
Making Determinations of
Independent Contractor Status with Respect
to Workers' Compensation

There is no real clear cut definition of an independent contractor; however, based on four Alaska Supreme Court decisions the Board looks at the following questions when determining if a person is an independent contractor or an employee.

First. Is the purported employer's business an enterprise-for-profit employing one or more persons and therefore an employer under the Act? Under a Supreme Court ruling this question must be answered before determining whether a person is an independent contractor or an employee.

Second. Is the worker an employer or an independent contractor under the "relative nature of the work test"? This test has two main parts and each part has three subparts. These are:

1. What is the character of the claimant's work or business?
 - a) what is the degree of skill involved in the claimant's work;
 - b) to what degree is the claimant's work a separate calling or business?
 - c) to what extent can the claimant's work be expected to carry its own accident burden (insurance).
2. What is the relationship of claimant's work or business to the purported employer's business?
 - a) to what extent is the claimant's work a regular part of the employer's regular work;
 - b) is the claimant's work regular or intermittent;
 - c) is the duration of the claimant's work sufficient to amount to the hiring of continuing services as opposed to the contracting for the completion of a particular job.

Once the Board determines that an employer does fall under the Alaska Workers' Compensation Act, it then views the evidences as a whole to determine if a person is an independent contractor or an employee.

The four Alaska Supreme Court decisions pertaining to this subject are:

- Searfus v. Northern Gas Co., 472 P.2d 966 (Alaska 1970)
Ostrel v. Alaska Workers' Compensation Board, 511 P.2d
1061, 1063 (Alaska 1973)
Kroll v. Reeser, 655 P.2d 753, 756 (Alaska 1983)
Grothe v. Olafson, No. 5766, Slip op. (Alaska Feb. 18, 1983)

Bill No. Senate Bill 194

Date March 26, 1987

Title "An Act excluding services provided by certain taxicab operators from the definition of employment for unemployment compensation coverage, etc."

Contact: Joe Sitton
465-2712

Eileen Plate
465-2700

Senate Bill 194 seeks to categorically exclude certain taxicab operators from the definition of employment for the purposes of unemployment insurance coverage.

The Department is puzzled as to the reason for the proposed exclusion since persons, including taxicab operators, who actually are performing as independent contractors, are presently excluded from unemployment insurance coverage under AS 23.20.525(a)(10). Under this current law, a person's status as an independent contractor is shown to exist if:

(A) the individual has been and will continue to be free from control and direction in connection with the performance of the service, both under the individual's contract for the performance of service and in fact;


(B) the service is performed either outside the usual course of the business for which the service is performed or is performed outside of all the places of business of the enterprise for which the service is performed; and

(C) the individual is customarily engaged in an independently established trade, occupation, profession, or business of the same nature as that involved in the service performed;

Examination of the employee/employer relationship in this regard is appropriate, and the Department supports the application of these criteria in making such determinations.

The exemption of taxicab operators from the independent contractor test, as appears to be proposed in this bill, is not in the interest of Alaska's workers, and the Department opposes it.

APPROVED:


Jim Sampson, Commissioner
Department of Labor

POSITION PAPER/Department of Labor

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

Bill Version : SB 194
Publish Date : _____

REQUEST: _____

Revision Date: _____
Title: "An Act excluding services provided
by certain taxicab operators..."
Sponsor: Jones
Requestor: Senate Labor and Commerce

Agency Affected: Labor
BRU: Administrative Services
Components: Unemployment Insurance

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: JS Joe Sitton, Director Phone: 465-4531
Division: Employment Security Date: 3/26/87
Approved by Commissioner: JB Jim Sampson Date: 3/26/87
Agency: Labor

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