

HB

212

COMMITTEE: SENATE STATE AFFAIRS

SUBJECT: HB 212-WORKERS'
COMP: CONTRACTORS & SUBCONTRACTOR

DATE: May 2, 2002



PLEASE SIGN IN

NAME
PLEASE PRINT

ADDRESS
(MAILING & ZIP)

E-MAIL

REPRESENTING
(No Acronyms)

TESTIFY?
Y/N

NAME PLEASE PRINT	ADDRESS (MAILING & ZIP)	E-MAIL	REPRESENTING (No Acronyms)	TESTIFY? Y/N
✓ AMY ELIKSON			REP. MURKOWSKI	YES
✓ DON ETH-KIDGE	710 W 9TH ST 99501		HEL CIO	YES
✓ Paul Grossi	Dept of Labor		DW W Comp	yes
✓ Alan Wilson	Home Builders		ASHBA	Yes
✓ Barbara Huff Truckers	Teamsters		Teamsters	yes
✓ Charlie Miller	10200 102286 99510		Alaska Natural Ins.	Y

RUSSELL, TESCHE, WAGG, COOPER & GABBERT

A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW

610 L STREET, SUITE 300
ANCHORAGE, ALASKA 98501-1952
TELEPHONE (907) 258-1747
FACSIMILE (907) 258-5846

KAREN L. RUSSELL
ALLAN E. TESCHE
RICHARD L. WAGG
JOSEPH M. COOPER
ROBIN JAGER GABBERT
MICHAEL A. BUZDZINSKI

MERRILEE S. HARRELL
OF COUNSEL
ELIZABETH D. GOUDREAU

April 22, 2002

Robin Ward
Alaska Workers' Compensation Board
P.O. Box 107019
Anchorage, Alaska 99510-7019

Re: CSHB 212

Dear Robin:

You requested a comment from me regarding CSHB 212 now before the Alaska Legislature.

As I understand the bill, a simple amendment to AS 23.30.045(a) would require subcontractors who act as "employers" to secure payment of worker's compensation insurance for themselves as well as their employees. Current law requires subcontractors to provide workers' compensation insurance for their employees, but does not necessarily require a sole proprietor acting as a subcontractor to provide the same coverage for himself.

In the fifteen years I have handled worker's compensation claims for insurers and employers, I have seen a number of unfortunate cases involving uninsured subcontractors who are injured in industrial accidents and have little recourse for payment of medical bills or time loss. Many of these cases involve so called "independent" truckers whose families are severely impacted by uninsured industrial accidents.

CSHB 212 plugs a loophole in Alaska's Workers' Compensation Act and will reduce the burden of industrial accidents now born by the families of uninsured subcontractors who are injured on the job. I recommend its passage by the Legislature.

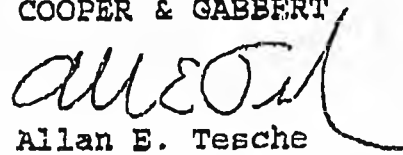
Letters of Support

Robin Ward
April 22, 2002
Page 2

If you have further questions about the bill, please contact me.

Cordially,

RUSSELL, TESCHE, WAGG
COOPER & GABBERT



Allan E. Tesche

AET/sbl
J:\AETHB213.LTR



ALASKA STATE HOMEBUILDERS ASSOCIATION

March 27, 2002

HB 212

The Alaska State Home Builders Association supports HB 212 as the most equitable approach to solving a problem that has frustrated the insurance and contracting industries for years. The ASHBA was an active member of the Sole Proprietor Workers Compensation Task Force along with representatives from the insurance, re-insurance, and trucking industries. Also participating on the task force were representatives from the state Division of Insurance and the Workers Compensation Division. This task force researched and debated options to address the issues related to current Sole Proprietor Workers Compensation regulations and finally brought forth the subject legislation in HB 212. At a recent Alaska State Home Builders Association Board of Directors Meeting, the board reaffirmed its support for this legislation.

Sincerely,

**Jim Ward
President
Alaska State Home Builders Association**



8301 SCHOON ST • SUITE 200 • ANCHORAGE, ALASKA • 99518
(907) 522-3931 • FAX (907) 522-3757



WARD
Development
& Construction Management
INCORPORATED

April 18, 2001

Rep. Lisa Murkowski
State Capitol
Juneau, AK 99801

RE: HB 212

Dear Rep. Murkowski:

I am writing to you in support of the above subject House Bill. I have been involved with the statewide task force that has been researching a solution to the problem of uninsured sole proprietors working as subcontractors for a prime contractor.

After a lengthy process of research, communication and negotiation, this bill is the best solution that could be found to solve the problem and create a level playing field for subcontractors and prime contractors.

Robin E. Ward
Ward Development

WCCA WORKERS' COMPENSATION COMMITTEE OF ALASKA
P.O. Box 200631 • Anchorage, Alaska • 99520

April 19, 2001

Rep. Lisa Murkowski
Chair, House Labor and Commerce Committee
State Capitol, Room 408
Juneau, AK 99801-1182

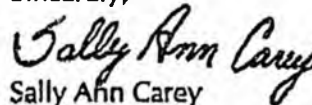
Dear Representative Murkowski:

The WCCA board of directors has reviewed House Bill 212 currently pending before the Labor and Commerce Committee and has voted to endorse the proposed legislation. WCCA directors feel the proposed change fills an obvious void in the State's Workers' Compensation law. The language in the legislation provides the necessary protection for both sole proprietors and general contractors in a fair and equitable way.

The Workers' Compensation Committee of Alaska is a private, nonprofit organization supported entirely through its membership. WCCA represents the interests of employers statewide with the mission "to ensure the quick, efficient, fair and predictable delivery of indemnity and medical benefits to injured workers at a reasonable cost to employers."

We encourage the committee to recommend passage of House Bill 212.

Sincerely,



Sally Ann Carey
President, WCCA Board of Directors

CC: Paul Grossi
Director, Division of Workers' Compensation

ALASKA STATE LEGISLATURE

Representative Lisa Murkowski Chair
Representative Andrew Halcro Vice-Chair
Representative Pete Kott
Representative Kevin Meyer
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Representative Harry Crawford
Representative Joe Hayes



Alaska State Capitol
Juneau, AK 99801-1182
Telephone: (907) 465-4954
Fax: (907) 465-2293
Representative_Lisa_Murkowski@legis.state.ak.us

HOUSE LABOR AND COMMERCE COMMITTEE

8 AAC 45.890. Determining Employee Status. For purposes of AS 23.30.265 (12) and this chapter, the board will determine whether a person is an "employee" based on the relative-nature-of-the-work test. The test will include a determination under (1) - (6) of this section. Paragraph (1) of this section is the most important factor and is interdependent with (2) of this section, and at least one of these factors must be resolved in favor of an "employee" status for the board to find that a person is an employee. The board will consider whether the work

(1) is a separate calling or business; if the person performing the services has the right to hire or terminate others to assist in the performance of the service for which the person was hired, there is an inference that the person is not an employee; if the employer

(A) has the right to exercise control of the manner and means to accomplish the desired results, there is a strong inference of employee status;

(B) and the person performing the services have the right to terminate the relationship at will, without cause, there is a strong inference of employee status;

(C) has the right to extensive supervision of the work then there is a strong inference of employee status;

(D) provides the tools, instruments, and facilities to accomplish the work and they are of substantial value, there is an inference of employee status; if the tools, instruments, and facilities to accomplish the work are not significant, no inference is created regarding the employment status;

(E) pays for the work on an hourly or piece rate wage rather than by the job, there is an inference of employee status; and

(F) and person performing the services entered into either a written or oral contract, the employment status the parties believed they were creating in the contract will be given deference; however, the contract will be construed in view of the circumstances under which it was made and the conduct of the parties while the job is being performed;

(2) is a regular part of the employer's business or service; if it is a regular part of the employer's business, there is an inference of employee status;

(3) can be expected to carry its own accident burden; this element is more important than (4) - (6) of this section; if the person performing the services is unlikely to be able to meet the costs of industrial accidents out of the payment for the services, there is a strong inference of employee status;

(4) involves little or no skill or experience; if so, there is an inference of employee status;

(5) is sufficient to amount to the hiring of continuous services, as distinguished from contracting for the completion of a particular job; if the work amounts to hiring of continuous services, there is an inference of employee status;

(6) is intermittent, as opposed to continuous; if the work is intermittent, there is a weak inference of no employee status.

Regulations

ALASKA STATE LEGISLATURE

Representative Lisa Murkowski Chair
Representative Andrew Halcro Vice-Chair
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Alaska State Capitol
Juneau, AK 99801-1182
Telephone: (907) 465-4954
Fax: (907) 465-2293

Representative_Lisa_Murkowski@legis.state.ak.us

HOUSE LABOR AND COMMERCE COMMITTEE

Sec. 23.30.045. Employer's liability for compensation. (a) An employer is liable for and shall secure the payment to employees of the compensation payable under AS 23.30.041, 23.30.050, 23.30.095, 23.30.145, and 23.30.180 - 23.30.215. If the employer is a subcontractor, the contractor is liable for and shall secure the payment of the compensation to employees of the subcontractor unless the subcontractor secures the payment.

(b) Compensation is payable irrespective of fault as a cause for the injury.

(c) For a person eligible for vocational rehabilitation service under this chapter or AS 23.15.080 who is placed with an employer for service at the request of the rehabilitation administrator or division of vocational rehabilitation to provide on the job training, work readiness, work therapy experience, or work sampling, the liability set out in (a) of this section applies to the state rather than to the employer. However, an employer may elect to assume the liabilities in (a) of this section.

(d) A contract may not be awarded by the state or a home rule or other political subdivision of the state unless the person to whom the contract is to be awarded has submitted to the contracting agency proof, furnished by the insurance carrier, of current coverage by workers' compensation insurance from an insurance company or association authorized to transact the business of workers' compensation insurance in this state or proof, furnished by the board, of a current certificate of self-insurance from the board. The person to whom the contract is awarded shall keep the workers' compensation insurance policy in effect during the life of the contract with the state or political subdivision. If the state or the political subdivision of the state fails to obtain proof of coverage or self-insurance or to protect itself under (e) of this section, and an employee of the contractor is injured during the term of the contract, the state or the political subdivision is liable for workers' compensation to the employee if the employee is unable to recover from the employer because of the employer's lack of financial assets. The state or the political subdivision is not liable, however, to the employee for workers' compensation if the employee can recover from the employer under (a) and (b) of this section.

(e) When a contracting agency of the state or a political subdivision receives notice that the workers' compensation insurance policy of an employer to whom the agency has awarded a contract has been cancelled due to nonpayment of a premium, without being replaced by a comparable policy, the agency may either terminate the contract with the employer or continue the premium payments on behalf of the employer in order to keep the policy in force during the life of the agency's contract. If the agency chooses to keep the policy in force, it may deduct its payments from the contract price or bring an action against the employer to recover the amount of the payments. When the contracting agency receives notice that the board has revoked a certificate of self-insurance held by a person to whom a contract has been awarded, the agency may terminate the contract. This subsection does not limit the causes of action or remedies that the state or political subdivision may have against the employer.

(f) In this section,

- (1) "contractor" means a person who undertakes by contract performance of certain work for another; and
- (2) "subcontractor" means a person to whom a contractor sublets all or part of the initial undertaking.

Statutes

Over the past several years, complaints have been received from general contractors in Alaska who have had to pay increased workers compensation premiums for subcontracting a job with a sole proprietor who might potentially be considered an employee of the general contractor rather than an independent contractor. The general contractors have tried to appeal what they considered unfair or inappropriate premium charges through the review procedures in the insurance code of the Alaska statutes. This situation cannot be resolved through the current insurance code but will instead require legislative changes in the workers compensation statutes.

Under current Alaska statutes, a contractor is responsible for workers compensation insurance for employees of a subcontractor unless the subcontractor provides the coverage. If subcontractors are sole proprietors, they are not required to have workers compensation unless they have employees and then they may choose to cover only the employees. Alaska statute allows a sole proprietor to purchase workers compensation coverage, but it is not mandatory.

Using Alaska Supreme Court case law, the Workers Compensation Board has found in certain cases that injured sole proprietors are employees of the general contractors and not independent contractors. Therefore, the general contractor is responsible for workers compensation coverage for the sole proprietor. Because of these cases, insurance companies frequently charge general contractors an additional premium for sole proprietor subcontractors after the general's policy is audited at the end of the policy period. These additional premiums are often substantial and were not included in the general's bid costs.

General contractors and subcontractors believe that the additional premium charge is unfair. From their point of view, there is no exposure since the sole proprietor is not considered the general's employee by either the general or the subcontractor and since the sole proprietor is not required by statute to be covered under a workers compensation policy. However, the Workers Compensation Board determines whether the injured individual is an employee or not only after an injury has occurred. This is because the intent of workers compensation laws is to provide the broadest amount of coverage for individuals who suffer injuries arising out of employment.

The Division of Workers Compensation is concerned with providing coverage for the most number of injured individuals. Approximately 10% of the work force is injured in on-the-job accidents each year and these injured workers need protection. Insurance companies and general contractors are concerned with having a clear knowledge of their liability for injuries and with knowing the costs of workers compensation coverage before bidding jobs. General contractors are also concerned that injuries to subcontractors and their employees may affect the general's individual loss history resulting in even higher costs for workers compensation coverage. Sole proprietors and other affected subcontractors are concerned about the cost of coverage and the situations where they would be required either to purchase coverage or have it purchased for them through the general even though Alaska statute says they do not have to have coverage.

Two possible options have been identified that could address everyone's concerns. The more complicated option would be to provide in statute the conditions under which a sole proprietor would be considered an employee of the general. If subcontractors do not meet the criteria for an employee, then they would be considered an independent contractor for purposes of workers compensation coverage. As an independent contractor, they would not be able to file a claim for workers compensation coverage against the general for injuries on the job. This option, however, would not prevent the independent contractor from filing other legal actions against the general for negligence. The difficulty with this option would be to establish clear and objective criteria that can be fairly evaluated to determine employee status. Another difficulty with this option is that some injured workers who should receive workers compensation benefits will be barred from recovery unless there is an appeal mechanism. This then re-introduces the unpredictability that exists in the current system.

White Paper

A simpler option would be to require sole proprietors who work as subcontractors to carry workers compensation coverage. This would provide the clarity that the generals and subcontractors seek, but it will increase costs for either the subcontractor who purchases coverage directly or for the general contractor if the subcontractor does not. This option would also meet the concerns of the Division of Workers compensation to provide coverage to the broadest range of injured workers by providing certainty as to liability in the controversy of subcontractor vs. employee issue. The benefit to the sole proprietor of having workers compensation coverage is the security from financial ruin if the sole proprietor were to sustain a serious injury.

A workers compensation policy for sole proprietors is available currently. To obtain this coverage, a sole proprietor would purchase a policy based on a flat payroll charge of \$20,100 which is the amount set by advisory organizations and approved by the Division of Insurance. This flat payroll charge for a sole proprietor is then multiplied by the rate per \$100 for each specific job classification. For example, some classifications and base rates are:

Classification	Rate	Est. Premium at \$20,100
5437 Cabinet Work/Interior Trim	9.05	\$1,819
5478 Carpet & Vinyl Install	7.30	\$1,467
5645 Carpentry - 1 & 2 Family	13.42	\$2,697
5474 Paint & Paper Hanging	9.17	\$1,843
7219 Trucking	9.84	\$1,978

Many people are unaware that most health insurance policies do not cover work related injuries. This could mean that injured workers do not have health insurance to respond to claim costs related to injuries suffered at a job site. Considering the benefits provided by workers compensation coverage, these costs are not out of reason.

Another currently available policy called a "Policy With No Employees" has been suggested as a possible solution to the problems outlined above. This policy is issued with a premium of \$150. Many sole proprietors do not have employees and have no intention of hiring employees. However, on occasion the sole proprietor may need to hire someone unexpectedly. For instance, if the sole proprietor becomes ill and cannot personally fulfill a contractual obligation, someone might be hired to help and then, by law, workers compensation coverage must be provided for this employee. Obtaining a "Policy With No Employees" for a minimum premium allows the sole proprietor to hire someone on an emergency basis without having to first worry about obtaining workers compensation coverage. At policy audit, the actual payroll and class code will be assigned to the policy and additional premium collected for those employees hired during the policy period. The policy does not provide coverage for the sole proprietor. This policy does not eliminate the possibility of "after the fact" determinations of employee/employer relationships between the general contractor and the subcontractor. Nor does it provide predictability of premium levels since the actual payroll, if any, will be used when the policy is audited. Neither of the primary concerns of the general and subcontractor, knowledge of liability and knowledge of workers compensation costs before bidding on jobs, are resolved through the use of this policy.

ALASKA STATE LEGISLATURE

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Alaska State Capitol
Juneau, AK 99801-1182
Telephone: (907) 465-4954
Fax: (907) 465-2293
Representative_Lisa_Murkowski@legis.state.ak.us

HOUSE LABOR AND COMMERCE COMMITTEE

Sponsor Statement House Bill 212 Employer's Liability for Workers Compensation

Under current Alaska statute, contractors are responsible for workers compensation insurance for employees of subcontractors unless subcontractors provide their own coverage. If the contractors are sole proprietors, they are not required to have workers compensation. Alaska statute provides for sole proprietors to purchase workers compensation coverage but does not require it. House Bill 212 requires workers compensation insurance for sole proprietors.

The Workers Compensation Board has found in certain cases that injured sole proprietors are employees of the general contractors and not independent contractors. Therefore, the general contractor has been responsible for workers compensation coverage. Because of these cases, insurance companies have charged general contractors an additional premium for sole proprietor subcontractors. As a matter of fairness to all parties, HB 212 requires sole proprietors to carry their own workers compensation coverage.

Understandably, insurance companies and general contractors are concerned about their liability for on-the-job injuries and seek a clear understanding of the costs of workers compensation coverage before bidding jobs. General contractors are also concerned that injuries to subcontractors and their employees may affect their individual loss history, which would result in higher costs for workers compensation coverage. Sole proprietors and subcontractors are concerned about the cost of coverage and the situations where they are required to either purchase coverage or have it purchased for them through the general contractor even though Alaska statute does not require such coverage.

The simplest solution, requiring workers compensation for sole proprietors, provides clarity to subcontractors who purchase coverage directly, and to the general contractor if the subcontractor does not. HB 212 meets the concerns of the Division of Workers Compensation and more importantly, provides protection and coverage to the broadest range of injured individuals.

ALASKA STATE LEGISLATURE

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Alaska State Capitol
Juneau, AK 99801-1182
Telephone: (907) 465-4954
Fax: (907) 465-2293
Representative_Lisa_Murkowski@legis.state.ak.us

HOUSE LABOR AND COMMERCE COMMITTEE

Memorandum

Date: April 25, 2002
To: Senator Gene Therriault
State Affairs Chair
From: Representative Lisa Murkowski
Subject: Hearing Request

House Bill 212, Employee Liability for Workers' Compensation, requires sole proprietors to purchase workers' compensation insurance.

Under current Alaska statute, contractors are responsible for workers compensation insurance for employees of subcontractors unless subcontractors provide their own coverage. Requiring workers compensation for sole proprietors provides clarity to subcontractors who purchase coverage directly, and to general contractors if the subcontractor does not. HB 212 provides protection and coverage to the broadest range of injured individuals.

Enclosed you will find a copy of House Bill 212, sponsor statement, zero fiscal note, and supporting documentation. Please schedule HB 212 in Senate State Affairs the earliest your schedule will allow.

FISCAL NOTE

**STATE OF ALASKA
2001 LEGISLATIVE SESSION**

Fiscal Note Number: 1
 Bill Version: CSHB 212(L&C)
 (H) Publish Date: 4/21/01

Revision Date/Time (Note if correction): _____ Department: Labor and Workforce Development
 Title: Employer's Liability for Workers' Comp BRU: Workers' Compensation
 Component: Workers' Compensation
 Sponsor: House L&C
 Requester: House L&C Component Number: 344

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2001) cost: None

POSITIONS

Full-time						
Part-time						
Temporary						

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

This legislation would amend AS 23.30.045(a) to require subcontractors to carry workers compensation coverage for their employees and themselves. If the subcontractor fails to secure coverage the contractor is liable for the coverage. The department does not anticipate an increase in operating costs as the result of this legislation.

Prepared by: Paul Grossi, Director Phone: 465-2790
 Division: Workers' Compensation Division Date/Time: 4/4/01 2:04 PM
 Approved by: Ed Flanagan, Commissioner Date: 04/04/01
 Agency: Department of Labor and Workforce Development

For distribution information, call the Governor's Legislative Office