

SB

323

OPTION #2

23-LS1498\D.4  
Craver  
4/14/04

AMENDMENT

OFFERED IN THE SENATE

TO: SB 323

1 Page 1, line 1, following "**compensation**":

2 Insert "**, sole proprietors and partnerships without employees,**"

3

4 Page 2, following line 2:

5 Insert a new bill section to read:

6 **"\* Sec. 3.** AS 23.40.045 is amended by adding a new subsection to read:

7 (g) Notwithstanding (a) of this section, a project owner, contractor, or  
8 subcontractor is not liable for and is not obligated to secure the payment of  
9 compensation to a sole proprietor or member of a partnership if the sole proprietorship  
10 or partnership does not have an employee and agrees in writing that the project owner,  
11 contractor, and subcontractor do not have

12 (1) an obligation to secure compensation; and

13 (2) liability for compensation payable under AS 23.30.041, 23.30.050,  
14 23.30.095, 23.30.145, and 23.30.180 - 23.30.215."

15

16 Renumber the following bill section accordingly.

23-LS1498\I  
Craver  
4/13/04

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

BY

Offered:  
Referred:

Sponsor(s): SENATOR SEEKINS

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to a project owner's, contractor's, or subcontractor's liability for  
2 workers' compensation and the exclusiveness of liability for workers' compensation."

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

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

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

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

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

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

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

10 \* Sec. 4. AS 23.30.055 is amended to read:

11 **Sec. 23.30.055. Exclusiveness of liability.** The liability of an employer  
12 prescribed in AS 23.30.045 is exclusive and in place of all other liability of the  
13 employer and any fellow employee to the employee, the employee's legal  
14 representative, husband or wife, parents, dependents, next of kin, and anyone  
15 otherwise entitled to recover damages from the employer or fellow employee at law or  
16 in admiralty on account of the injury or death. The liability of the employer is  
17 exclusive even if the employee's claim is barred under AS 23.30.022. However, if an  
18 employer fails to secure payment of compensation as required by this chapter, an  
19 injured employee or the employee's legal representative in case death results from the  
20 injury may elect to claim compensation under this chapter, or to maintain an action  
21 against the employer at law or in admiralty for damages on account of the injury or  
22 death. In that action the defendant may not plead as a defense that the injury was  
23 caused by the negligence of a fellow servant, or that the employee assumed the risk of  
24 the employment, or that the injury was due to the contributory negligence of the  
25 employee. In this section, "employer" includes, in addition to the meaning given  
26 in AS 23.30.395, a person who, under AS 23.30.045(a), is liable for or potentially  
27 liable for securing payment of compensation.

23-LS1498H  
Craver  
4/1/04

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

BY

Offered:  
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A BILL

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

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

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

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

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

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

7 (3) "project owner" means a person who, in the course of the person's  
8 business, engages the services of a contractor required to register under AS 08.18.011  
9 and who enjoys the beneficial use of the work.

10 \* Sec. 4. AS 23.30.055 is amended to read:

11 **Sec. 23.30.055. Exclusiveness of liability.** The liability of an employer  
12 prescribed in AS 23.30.045 is exclusive and in place of all other liability of the  
13 employer and any fellow employee to the employee, the employee's legal  
14 representative, husband or wife, parents, dependents, next of kin, and anyone  
15 otherwise entitled to recover damages from the employer or fellow employee at law or  
16 in admiralty on account of the injury or death. The liability of the employer is  
17 exclusive even if the employee's claim is barred under AS 23.30.022. However, if an  
18 employer fails to secure payment of compensation as required by this chapter, an  
19 injured employee or the employee's legal representative in case death results from the  
20 injury may elect to claim compensation under this chapter, or to maintain an action  
21 against the employer at law or in admiralty for damages on account of the injury or  
22 death. In that action the defendant may not plead as a defense that the injury was  
23 caused by the negligence of a fellow servant, or that the employee assumed the risk of  
24 the employment, or that the injury was due to the contributory negligence of the  
25 employee. In this section, "employer" includes, in addition to the meaning given  
26 in AS 23.30.395, a person who, under AS 23.30.045(a), is liable for or potentially  
27 liable for securing payment of compensation.

# ALASKA STATE SENATE



Session:  
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119 N. Cushman, Suite 201  
Fairbanks, Alaska 99701  
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Senator\_Ralph\_Seekins@legis.state.ak.us

**Senator Ralph Seekins**  
District D

## Senate Bill 323 Sponsor Statement

**“An Act relating to a project’s liability for workers’ compensation and the exclusiveness of liability for workers’ compensation.”**

Senate Bill 323 revises the Workers’ Compensation Act as it applies to contractors and subcontractors. The two principal modifications are as follows:

1. Responsibility for payment of workers’ compensation is extended up the chain of contracts to include project owners; and,
2. Injured parties in receipt of benefits under the Workers’ Compensation Act would be barred from “double dipping” via a tort liability claim.

Under AS 23.30.045(a), an injured employee only has recourse for workers’ compensation benefits against his immediate employer and if the employer is a subcontractor, against the contractor who retained the subcontractor. The proposed legislation allows recourse for the payment of compensation benefits against *project owners*, as well as contractors and subcontractors.

This extension of the rights of injured employees is sensible inasmuch as the project owner is the beneficial user of the work performed by the injured employee. It should be noted that a project owner does not include individuals who have engaged the services of contractors to build or renovate a residential home.

Finally, the proposed legislation extends the exclusivity protection set forth in AS 23.30.055 to all parties in the contracting chain relating to a project. This includes the employer of the injured employee, and those parties, which are upstream in the chain of contracts from the employer of the injured employee.

In other words, if an injured employee works for a subcontractor, then the subcontractor, the contractor and the project owner would be free of tort liability so long as the injured employee receives the benefits set forth in the Alaska Workers’ Compensation Act.

Senate Bill 323 will encourage all parties participating in a project to identify and enforce strict safety standards for the benefit of all workers rather than deflecting responsibility through the use of indemnity agreements as is common practice currently. At the same time, it ensures that injured workers will receive all benefits available under the Alaska Workers’ Compensation Act.

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101


State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

February 25, 2004

**SUBJECT:** Sectional Summary of SB 323 (Work Order No. 23-LS1498\D)

**TO:** Senator Ralph Seekins  
Attn: Brian Hove

**FROM:** Barbara R. Craver   
Legislative Counsel

You have requested a sectional summary of the above-described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

**Section 1.** AS 23.30.045(a) is amended to provide that the contractor or the project owner is liable for the subcontractor's employees on a job if the subcontractor doesn't secure payment for the subcontractor's employees. Similarly for the contractor's own employees, the project owner is responsible for workers' compensation if the contractor does not cover the contractor's employees.

**Section 2.** AS 23.30.045(f) adds a new definition; one for "project owner."

**Section 3.** AS 23.30.055 is amended to add a person responsible for providing workers' compensation coverage under AS 23.30.045(a) to the description of employers who are protected by the exclusive remedy provisions of workers' compensation.

If I may be of further assistance, please advise.

BRC:med  
04-231.med

# FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

Fiscal Note Number: 1  
Bill Version: SB 323  
(S) Publish Date: 3/10/04

Revision Date/Time (Note if correction): \_\_\_\_\_ Department: Labor and Workforce Development  
Title: Workers Compensation and Contractors RDU: Workers' Compensation  
Sponsor: Senator Senkins Component: Workers' Compensation  
Requester: Senate L&C Component Number: 344

**Expenditures/Revenues** (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2004) cost: None  
Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

There is no anticipated fiscal impact to the department as a result of this legislation.

Prepared by: Paul Lisankie, Director Phone 465-2790  
Division: Workers' Compensation Division Date/Time 2/27/04 2:38 PM  
Approved by: Greg O'Claray, Commissioner Date 2/27/2004  
Agency: Department of Labor and Workforce Development

# FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

Fiscal Note Number: 2  
Bill Version: SB 323  
(S) Publish Date: 3/10/04

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: DOT&PF  
Title Liability for Workers' Compensation RDU Administration & Support  
Component Commissioner's Office  
Sponsor Seekins  
Requester Senate Labor and Commerce Component No. 530

**Expenditures/Revenues** (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2004) cost: 0.0  
Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

Prepared by: Nona Wilson Phone 465-6973  
Division Legislative Liaison Date/Time 3/1/04 2:53 PM  
Approved by: John MacKinnon Date 3/1/2004  
Agency Deputy Commissioner

# FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

Fiscal Note Number: 3  
Bill Version: SB 323  
(S) Publish Date: 3/10/04

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Administration  
Title An Act relating to a project owner's liability for workers' compensation BRU Risk Management  
Component Risk Management  
Sponsor Senator Seekins  
Requester Senate Labor and Commerce Component No. 71

**Expenditures/Revenues** (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

FUND SOURCE	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1007 I/A Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2004) cost: 0.0  
Check this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

**POSITIONS**

Full-time	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)  
This legislation has no fiscal impact to Risk Management who administers the state self insurance program protecting all state agencies.  
  
23.30.045(d) already precludes a state agency from awarding a contract without evidence of current workers' compensation coverage, and 23.30.045(e) already enables the state to use contract funds to renew or obtain replacement insurance coverage in the event of insurance carrier cancellation or non-renewal within the contract period.

Prepared by: J. Brad Thompson, Director Phone \_\_\_\_\_  
Division: Risk Management Date/Time 3/1/04 2:29 PM  
Approved by: \_\_\_\_\_ Date 3/1/2004  
Agency: Administration



March 4, 2004

Senator Ralph Seekins  
Chairman, Senate Judiciary Committee  
State Capitol, Room 125  
Juneau, AK 99801-1182  
907-465-2327  
FAX: 907-465-5241

Dear Senator Seekins,

I support the proposed revisions to AS 23.30.045 for Workmen's Compensation that includes protection for the other participants in construction projects such as the General Contractor and the Project Owner. The Workmen's Compensation Program was originally designed to protect the injured worker and his employer by requiring workmen's compensation insurance to be in place to take care of the reasonable costs of their injuries without regard to cause or fault of the injury. The injured worker should not be allowed to recover additional costs for this same injury through lawsuits to other parties on the construction project including the owners. These lawsuits are becoming more frequent in their occurrence and owners (including the State of Alaska) deflect these costs back to the employer through the use of indemnity provisions in their contracts. Therefore, the employer essentially has to pay far in excess of the reasonable cost of the injury for the costs of these injuries through the litigation and court system. These costs are hitting all of our company's bottom lines and our insurance premiums continue to increase exponentially because of these risks. The proposed revisions should help get these cases back under control while still providing the worker with the just compensation he deserves while recovering from a jobsite incident.

Sincerely,

William W. Morrow  
President

**Subject: SB 323**

**Date: Mon, 8 Mar 2004 16:56:59 -0900**

**From: "Patti Juliussen" <pjuliussen@eidemil.alaska.net>**

**To: <Senator\_Ralph\_Seekins@legis.state.ak.us>**

Please see e-mail from Jack Miller below. Thank you.

**Patti J. Juliussen**

**Legal Secretary to Jack Miller**

**Senator Bunde: I am writing because Pam LaBolle of the State Chamber said you had asked a question regarding SB 323 at the recent hearing before your L&C Committee. As I understand it, you asked whether all contracting parties, including project owners, contractors and subcontractors, would be required to carry their own workers' compensation insurance if the Bill passes into law. Actually, the Bill should have no effect on the obligation of the parties to procure WC coverage. As you know, with very few exceptions, current law requires all employers operating in Alaska to carry WC insurance that is consistent with the WC statutes and regulations. That requirement is not affected by SB 323. In fact, the Bill will have a positive impact for both workers and employers because it will emphasize the importance of confirming that all parties in the chain of contracting have the required insurance in place. That, in turn, will force project owners to use only qualified and fully insured contractors and subcontractors on their projects. If they fail to do so and a contractor or subcontractor does not have the required insurance the claim would be covered under the project owner's policy. Extending the obligation for paying WC benefits for an injured worker to the project owner, contractor and its subcontractors is one of the primary objectives of the Bill. Again, that is a significant benefit for Alaska labor.**

**Hopefully this answers your question. If not, I plan on attending tomorrows hearing and will be glad to address questions at that time. -- Jack Miller --**