

SB

303

SENATE COMMITTEE REPORT

DATE: 4/2/10

FURTHER: Rules

DATE TURNED
IN TO OFFICE: 4/7/10

Judiciary Committee considered SENATE BILL NO. 303

SB 303 WORKERS' COMPENSATION AND CONTRACTORS

"An Act relating to a subcontractor's, contractor's, and project owner's liability for workers' compensation, to sole proprietors and partnerships without employees, and to managers or managing members of limited liability companies, and excluding certain persons from liability for securing the payment of workers' compensation benefits to employees; and providing for an effective date."

and recommends:

- be replaced with SCS or CS SB303 (JUD)
- adopt previous SCS or CS SCS/CS- Forthcoming
- attached amendment(s)
- adopt _____ Letter of Intent
- further referral to _____ Committee

SENATE BILL:	
<input type="checkbox"/>	Same Title
<input checked="" type="checkbox"/>	New Title
<hr/>	
HOUSE BILL:	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	Technical Title Change
<input type="checkbox"/>	New Title w/ SCR # _____

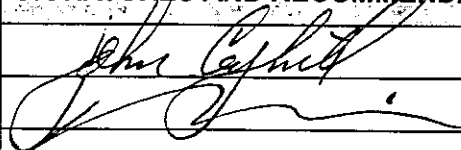
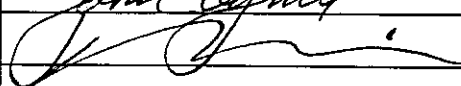
NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#
LWF	3/22/10			✓	1

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	PRINTED LAST NAME	DO PASS	DO NOT PASS	NO REC	AMEND
	Gophit			✓	
	Wielechowski	✓			
CHAIR: <u>WOOSTER</u>	French	✓			

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

April 2, 2010

SUBJECT: CSSB 303() workers' compensation amendment (Work Order No. 26-LS1089\S)

TO: Senator Joe Paskvan
Chair of the Senate Labor and Commerce Committee
Attn: Jeff Stepp

FROM: Dennis C. Bailey *DCB*
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.

Section 1. Removes a provision that requires a project owner to be liable for and secure payment for workers' compensation when the contractor fails to secure payment for the contractor's employees, or for subcontractor's employees.

If the employer is a subcontractor, the contractor is liable for securing payment of compensation for the employees of the subcontractor unless the subcontractor secures the payment.

Section 2. Amends the definition of a "contractor" for purposes of defining an employer's liability for workers' compensation by removing an exception that excludes a vendor who sells or leases tools, equipment, other goods, or property.

Section 3. Requires a subcontractor acting as an independent contractor who has no employees to secure payment for workers' compensation for the subcontractor, and to provide a certificate of workers' compensation insurance coverage for the project.

If a subcontractor fails to secure payment for workers' compensation causing a contractor to become liable for an additional premium, the subcontractor is liable to the contractor for the additional premium and penalties.

Senator Joe Paskvan

April 2, 2010

Page 2

Section 4. Removes a definition of an "employer" that allows a person who is potentially liable for securing workers' compensation to benefit from the exclusive liability provisions of the Alaska Workers' Compensation Act.

Section 5. Repeals a specific definition of a "project owner."

Section 6. Gives the Act a January 1, 2011, effective date.

DCB:plm

10-196.plm

26-LS1089AS
Bailey
4/2/10

CS FOR SENATE BILL NO. 303()

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SIXTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): SENATE LABOR AND COMMERCE COMMITTEE

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 workers' compensation for independent contractors without
3 employees, and excluding certain persons from liability for securing the payment of
4 workers' compensation benefits to employees; and providing for an effective date."

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
10 THE PAYMENT OF COMPENSATION TO ITS EMPLOYEES], the contractor is
11 liable for and shall secure the payment of the compensation to employees of the
12 subcontractor unless the subcontractor secures the payment [. IF THE
13 EMPLOYER IS A CONTRACTOR AND FAILS TO SECURE THE PAYMENT OF
14 COMPENSATION TO ITS EMPLOYEES OR THE EMPLOYEES OF A

1 SUBCONTRACTOR, THE PROJECT OWNER IS LIABLE FOR AND SHALL
2 SECURE THE PAYMENT OF THE COMPENSATION TO EMPLOYEES OF THE
3 CONTRACTOR AND EMPLOYEES OF A SUBCONTRACTOR, AS
4 APPLICABLE].

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

6 (1) "contractor" means a person who undertakes by contract
7 performance of certain work for another [BUT DOES NOT INCLUDE A VENDOR
8 WHOSE PRIMARY BUSINESS IS THE SALE OR LEASING OF TOOLS,
9 EQUIPMENT, OTHER GOODS, OR PROPERTY];

10 * **Sec. 3.** AS 23.30.045 is amended by adding new subsections to read:

11 (g) A subcontractor who is hired by a contractor as an independent contractor
12 and who has no employees during the term of the contract is liable for and shall secure
13 the payment of compensation payable under AS 23.30.041, 23.30.050, 23.30.095,
14 23.30.145, and 23.30.180 - 23.30.215 that provides coverage for the subcontractor and
15 shall produce a certificate of workers' compensation insurance coverage for the
16 project.

17 (h) If a subcontractor fails to secure the payment required under (a) or (g) of
18 this section and the contractor becomes liable for an additional premium because of
19 the subcontractor's failure to secure payment, the subcontractor is liable to the
20 contractor for the amount of the additional premium and associated penalties.

21 * **Sec. 4.** AS 23.30.055 is amended to read:

22 **Sec. 23.30.055. Exclusiveness of liability.** The liability of an employer
23 prescribed in AS 23.30.045 is exclusive and in place of all other liability of the
24 employer and any fellow employee to the employee, the employee's legal
25 representative, husband or wife, parents, dependents, next of kin, and anyone
26 otherwise entitled to recover damages from the employer or fellow employee at law or
27 in admiralty on account of the injury or death. The liability of the employer is
28 exclusive even if the employee's claim is barred under AS 23.30.022. However, if an
29 employer fails to secure payment of compensation as required by this chapter, an
30 injured employee or the employee's legal representative in case death results from the
31 injury may elect to claim compensation under this chapter, or to maintain an action

1 against the employer at law or in admiralty for damages on account of the injury or
2 death. In that action, the defendant may not plead as a defense that the injury was
3 caused by the negligence of a fellow servant, or that the employee assumed the risk of
4 the employment, or that the injury was due to the contributory negligence of the
5 employee. [IN THIS SECTION, "EMPLOYER" INCLUDES, IN ADDITION TO
6 THE MEANING GIVEN IN AS 23.30.395, A PERSON WHO, UNDER
7 AS 23.30.045(a), IS LIABLE FOR OR POTENTIALLY LIABLE FOR SECURING
8 PAYMENT OF COMPENSATION.]

9 * **Sec. 5.** AS 23.30.045(f)(2) is repealed.

10 * **Sec. 6.** This Act takes effect January 1, 2011.



Senator Joe Paskvan

Alaska State Senate • District E • Fairbanks • Ft Wainwright

Sponsor Statement Senate Bill 303 Workers' Compensation and Contractors

From statehood and for decades afterward, Alaska's workers' compensation statutes promoted safety in the workplace by providing for actions by injured employees against those on the jobsite, other than their own employer, whose fault caused the employee's injury.

Most Alaskans are shocked, then, to learn that the exclusive liability provisions of AS 23.30.055, established in 2004, protect a project owner or general contractor from any liability when a subcontractor's employee is injured or killed, even when the project owner or general contractor acts with criminal negligence, when that criminal negligence is defined, in part, as, "the risk must be of such a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation."

Senate Bill 303 seeks to return to the previous system which allowed for accountability and responsibility for wrongful conduct.

A fundamental principle when speaking to the concept of personal responsibility is: If you break it, you pay for it. This fundamental principle is thought of as a guiding standard and it is advanced as a family value worthy of passing from parent to child. We expect that if others do something wrong to us that the wrongdoer will be responsible and, correspondingly, if we do something wrong to another that we will be responsible.

In the common application of this fundamental principle to driving a vehicle, we expect that if we fail to stop for a red light and hurt someone that we will be responsible and that if someone else runs a red light that they will be responsible to us for the harm caused to a son, daughter, family member, or other loved one.

Just like responsible operators of motor vehicles know that they must follow the rules of the road (e.g., stopping for red lights), employers know that they must generally comply with state and federal codes, regulations, and laws relating to workplace safety, and are also subject to additional common law or statutory duties and responsibilities. Likewise, project owners, contractors and other entities have legal duties and responsibilities relating to the safety of workers.

Alaska has a system whereby the fault is apportioned so there can never be the worry that anyone will ever be responsible for more than their just share of the fault. However, where the project owner and/or contractor is at fault, but is nevertheless indemnified by the employer or granted immunity through legislation, the employer is left bearing the burden of the conduct of the project owner and/or contractor, and the project owner and/or contractor is not required to take any personal responsibility for its own actions.

In Juneau:

State Capitol, Juneau, AK 99801
(907) 465-3709 Office • (907) 465-4714 Fax

senator joe.paskvan@legis.state.ak.us

In Fairbanks:

1292 Sadler Way, Ste. 308 Fairbanks, AK 99701
(907) 451-4347 Office • (907) 451-4348 Fax

Workers compensation has always been a system under which harm is only partially compensated. For example, if an unmarried worker without children is killed, the compensation benefits are modest funeral expenses only.

A common argument against the system prior to 2004 relates to the objection to "double dipping." However, prior to 2004, the monies recovered by the injured employee reimbursed the employer's compensation carrier for the benefits paid to the injured employee under the workers' compensation system; therefore, eliminating any notion of "double dipping."

I urge your support of this legislation.

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

March 15, 2010

SUBJECT: Workers' compensation by contractor employer or project owner;
sectional summary (SB 303, Work Order No. 26-LS1089R)

TO: Senator Joe Paskvan
Chair of the Senate Labor and Commerce Committee
Attn: Jake Hamburg

FROM: Dennis C. Bailey 
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.

Section 1. Removes a provision that requires a project owner to be liable for and secure payment for workers' compensation when the contractor fails to secure payment for the contractor's employees, or for subcontractor's employees.

Section 2. Amends the definition of a "contractor" for purposes of defining an employer's liability for workers' compensation by removing an exception that excludes a vendor who sells or leases tools, equipment, other goods, or property.

Section 3. Makes a conforming change by removing a definition of an "employer" for purposes of workers' compensation exclusive liability.

Section 4. Repeals a definition of a "project owner."

Section 5. Gives the Act a January 1, 2011, effective date.

DCB:ljw
10-176.ljw

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

March 25, 2010

SUBJECT: Workers' compensation; exclusive liability for project owners and contractors (SB 303, Work Order No. 26-LS1089\R)

TO: Senator Joe Paskvan
Chair of the Senate Labor and Commerce Committee
Attn: Jeff Stepp

FROM: Dennis C. Bailey
Legislative Counsel

This memorandum is in response to your request for a memo that provides short answers to the questions posed in the memorandum to your office dated March 23, 2010, and an additional question related to whether the exclusive remedy provisions of AS 23.30.055 apply when the actions of an owner or contractor constitute criminal negligence.¹

1. May an owner or general contractor assert the exclusive remedy of the Alaska Workers Compensation Act, based on the last sentence of AS 23.30.055, to avoid liability for an injury to an employee of a subcontractor that occurs during employment?

The short answer is yes, based on the analysis in my prior memorandum.

2. Are the "intentional injury" and "illegally employed minor" exceptions the only recognized exception to the workers' compensation exclusive remedy statute?

The short answer is yes.²

3. Do the exclusive remedy provisions of AS 23.30.055 protect a project owner or general contractor from liability for the injuries to a subcontractor's employee if the owner or general contractor acts with criminal negligence?³

¹ My conclusions are based on existing law, not addressing the changes to AS 23.30.055 proposed in SB 303.

² My research of the Alaska case law did not reveal an additional exception to AS 23.30.055.

³ The material provided describes criminal negligence as follows: "the risk must be of such a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation."

Senator Joe Paskvan
March 25, 2010
Page 2

The short answer is yes.⁴

4. Do the exclusive remedy provisions of AS 23.30.055 protect an employer who intentionally injures an employee, or who violates child labor law?

The short answer is no, based on the analysis in my previous memo.

If I may be of further assistance, please advise.

DCB:med
10-057.med

⁴ I am unable to locate caselaw, an administrative opinion, or an attorney general opinion in Alaska that addressed criminally negligent conduct in the context of a workers compensation claim. Absent intentional conduct, it is unlikely that a court would find criminally negligent conduct on the part of an employer to be the kind of conduct that should be outside of the operation of workers' compensation statutes. See 6-103 *Larson's Workers' Compensation Law*, sec. 103.03

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

March 23, 2010

SUBJECT: Questions regarding workers' compensation exclusive remedy provisions (SB 303, Work Order No. 26-LS1089\R)

TO: Senator Joe Paskvan
Chair of the Senate Labor and Commerce Committee
Attn: Jeff Stepp

FROM: Dennis C. Bailey
Legislative Counsel

This memorandum responds to your questions concerning the exclusive liability provisions of the existing Alaska Workers' Compensation Act.

May an owner or a general contractor assert the exclusive remedy provisions of the Alaska Workers' Compensation Act to avoid liability for an injury to an employee of a subcontractor that occurs during employment?¹

AS 23.30.055 sets out the exclusive liability provisions in the Alaska Workers' Compensation Act; the section reads:

Sec. 23.30.055. Exclusiveness of liability.

The liability of an employer prescribed in AS 23.30.045 is exclusive and in place of all other liability of the employer and any fellow employee to the employee, the employee's legal representative, husband or wife, parents, dependents, next of kin, and anyone otherwise entitled to recover damages from the employer or fellow employee at law or in admiralty on account of the injury or death. The liability of the employer is exclusive even if the employee's claim is barred under AS 23.30.022. However, if an employer fails to secure payment of compensation as required by this chapter, an injured employee or the employee's legal representative in case death results from the injury may elect to claim compensation under this chapter, or to maintain an action against the employer at law or in admiralty for damages on account of the injury or death. In that action, the defendant may not plead as a defense that the injury was caused by the negligence of a fellow servant, or that the employee assumed the risk of the employment, or that the injury was due to the contributory negligence

¹ Workers' compensation is "payable irrespective of fault as cause for the injury." AS 23.30.045(b).

of the employee. In this section, "employer" includes, in addition to the meaning given in AS 23.30.395, a person who, under AS 23.30.045(a), is liable for or potentially liable for securing payment of compensation.

Under AS 23.30.055, an employer's liability to secure workers' compensation under AS 23.30.045² is the exclusive liability of an employer for an injury to the employee. The last sentence of AS 23.30.055 adds to the definition of an "employer" a person who is potentially liable for securing workers' compensation payment. Under AS 23.30.045(a), a subcontractor, a contractor, or a project owner are each potentially liable for securing workers' compensation payments; therefore, any of them may assert the exclusive liability provisions of AS 23.30.055 as a defense.

Do the exclusive remedy provisions of AS 23.30.055 protect an employer who intentionally injures an employee or who violates child labor laws?

The Alaska Supreme Court has recognized an intentional injury exception to the exclusive remedy provisions in AS 23.30.055. The Alaska Supreme court has

held that [the] exclusive remedy provision does not apply where an employee commits an intentional tort against a fellow worker. We found that the "socially beneficial purpose of the work[ers'] compensation law

² AS 23.30.045 provides:

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 and fails to secure the payment of compensation to its employees, the contractor is liable for and shall secure the payment of the compensation to employees of the subcontractor. If the employer is a contractor and fails to secure the payment of compensation to its employees or the employees of a subcontractor, the project owner is liable for and shall secure the payment of the compensation to employees of the contractor and employees of a subcontractor, as applicable.

(f) In this section,

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

(2) "project owner" means a person who, in the course of the person's business, engages the services of a contractor and who enjoys the beneficial use of the work;

(3) "subcontractor" means a person to whom a contractor sublets all or part of the initial undertaking.

Senator Joe Paskvan
March 23, 2010
Page 3

would not be furthered by allowing a person who commits an intentional tort to use the compensation law as a shield against liability." We have permitted recovery for intentional torts "on the theory that the harm is not accidental and therefore not covered by the act."

Fenner v. Municipality of Anchorage, 53 P.3d 573, 575 (Alaska 2002) (internal cites omitted). The exception is limited to those cases where an employer has a specific intent to injure an employee. *Id.* at 577. See also *Williams v. Mammoth of Alaska*, 890 P.2d 581 (Alaska 1995) (exclusive remedy bars employee's common law tort claim against partner where partner's negligence arises within partnership business); *Elliott v. Brown*, 569 P.2d 1323 (Alaska 1977) (where employer hit and shoved employees, actions were intentional enough to take case outside workers' compensation system); *Van Bien v. ERA Helicopters, Inc.*, 779 P.2d 315 (Alaska 1979) (aviation firm dispatching pilots without adequate sleep was gross negligence or wilful and knowing violation of FAA regulations, but not the type of intentional tort actionable outside of the workers' compensation system).

With regard to your question concerning the application of child labor laws to the exclusive liability provisions of the Alaska Workers' Compensation Act, if an employer violates child labor laws, AS 23.30.055 does not bar a common law action for damages brought against an employer by a person who was employed in violation of child labor laws at the time of the injury. *Whitney-Fidalgo Seafoods, Inc. v. Beukers*, 554 P.2d 250 (Alaska 1976).

In the *Beukers* case, the Alaska Supreme Court found that the Alaska Workers' Compensation Act does not specifically address the question which remedies are available to illegally employed minors injured in the course of their employment. *Id.* at 252. However, the court held, as a matter of public policy, that

where an employer has knowingly entered into an illegal contract of employment with a child, in express violation of a statute, the employer will not be permitted to insist that a child is an "employee" within the terms of the workmen's compensation act, so that the child can no longer assert its common law rights against the employer.

Id. at 253.

If I may be of further assistance, please advise.

DCB:ljw
10-207.ljw

oners, and providing the necessary expenses of performing such duties, and in the prosecuting of all crimes denounced by Territorial laws the costs shall be paid the same as is now or may hereafter be provided by act of Congress providing for the prosecution of criminal offenses in said Territory, except that in prosecutions growing out of any revenue law passed by the Legislature the costs shall be paid as in civil actions and such prosecutions shall be in the name of the Territory."

DISPOSITION OF TERRITORIAL FUNDS.

The funds of the Territory have been deposited with various banks, and interest is being received upon them at the rate of two per cent. per annum, the funds being deposited as "open accounts." The banks of deposit have in all cases given bonds to the Territory for the safeguarding of the moneys in their hands.

TERRITORIAL MINING LAW.

The Territorial mining law (Chapter 74, Session Laws of 1913) has been and still is, a subject of much discussion for and against. It is urged by some that this law is confiscatory in some of its provisions and therefore should be repealed; others assert with equally strong convictions that the law is sound in principle and should be retained with some minor amendments. You come direct from the people and your course should be guided by what you believe will confer the greatest good upon the greatest number. Mining is the leading industry of the Territory and every legitimate encouragement should be afforded it. To handicap any industry by unjust or repressive restrictions is inimical to development, and upon the development of its resources will depend the growth and prosperity of the Territory and the consequent welfare of its people.

The report of the Territorial Inspector of Mines will be submitted to you, together with a number of recommendations, including amendments to the act relating to the inspection of mines in the Territory, and making the payment of wages to miners more secure and certain.

WORKMEN'S COMPENSATION.

What are known as workmen's compensation or employers' liability laws have been enacted by the Federal government and in many states, and are being favorably considered everywhere. Whether the time has come when this Territory should provide legislation for such compensation

Alaska Territorial
Governor J.F. Strong,
March 2, 1915
Message to Alaska
Legislature

for industrial accidents, as may be considered just to both labor and capital, employer and employe, is a matter worthy of consideration, in view of our limited industries and the cost of administration that such law would entail. Of its advantages there can be no doubt, however, for in this way alone can the unfortunate employe, and sometimes the equally unfortunate employer, be protected from those who speculate upon the misfortunes of others. The subject must be approached in a spirit of fairness, with broad views of the dignity and importance of the laborer, aside from the labor that he performs, and also with a true conception of the rights of capital in its relation to industrial affairs. Each to a great extent, under our system of government, is dependent upon the other, but we must never forget the human equation. Money is for the use and support of the man; not to rule him. It is merely a measure of value, and those who have much of it should never be permitted to use it in such a way as to control the man, or the government which is established by him for his use and advancement. *

AN EIGHT-HOUR DAY.

A law passed by the First session of the Legislature provides for an eight-hour day in all hard-rock and coal mines. This law I believe has been generally observed and has proved generally satisfactory. Under its operations placer mines are excepted, but there would seem to be no legitimate reason why the eight-hour day should not be extended to all kinds of underground and other mining. Speaking by and large, experience has demonstrated that a man who works eight hours a day will do as much work as he who works ten hours, and he will probably do it better.

ELECTIONS.

The need of a modified form of the Australian ballot system is imperative in this Territory. Under the present method many kinds of ballots are now used and it is frequently impossible for the voter to cast an independent ballot and maintain his sovereign right of citizenship. A simple, practical law that will meet present requirements is recommended. A law for the registration of voters in Territorial elections in all incorporated towns would be a logical concomitant of an improved ballot law.

In this connection I may be permitted to point out that a corrupt practices act would tend to promote purity of elections. Fortunately Alaska has been comparatively free from corruption in elections, but it has not been unknown.

Patrick A. Thompson
3814 Spring Coulee Rd
Bellingham, WA 98226
(360) 933-1210
patthompson58@yahoo.com

Senator Joe Paskvan, Chair
Senate Labor and Commerce Committee
State Capitol, #7
Juneau, AK 99801
Fax is (907) 465-4714

Re: Senate Bill 303

Dear Senator Paskvan:

First let me thank you for your efforts in trying to correct an unfair provision in the worker's compensation law, passed during the corrupt reign of Bill Allen, which provides immunity to project owners or general contractors from fairly compensating a worker injured by the direct negligence of a project owner or general contractor.

My name is Pat Thompson, age 52, and I am an example of how this law you are trying to change can destroy a workingman's life.

I worked in the oil fields in Alaska my entire adult life and was proud to do so and was treated well.

On October 4 of 2006 I worked for PEAK Oilfield Services. On that day I was assigned a fire truck to help clean a Vac truck at the Beluga waste disposal facility that is owned and operated by Conoco Phillips. During the cleaning, I suffered a devastating electrical shock when I touched the Vac truck. These trucks are supposed to be grounded to protect against static electricity. Conoco failed to provide any kind of ground. If the ground had been provided, I would have used it.

I now live with a brain injury. My partner, Tory Sandoz, has helped me compose this letter, as I am unable to do this on my own. I am unable to provide a living for myself due to inability to organize, recall recent

information, and physically move about for more than an hour or two without rest. I must take medicine to manage depression, nerve pain, stabilize mood. My relationships are suffering, as they are weary of my constant pain. I feel like I am an 80-year-old man.

As you know, the worker's comp system is pretty bad. I paid over \$20,000 from my life savings to get a proper diagnosis and treatment from specialists in Chicago. The work comp matter grinds on with no help in sight. I have no income and must tap into my very rapidly dwindling retirement account.

God bless you and the other compassionate legislators for trying to undo this horrible legislative mistake.

Very truly yours,

Patrick A. Thompson



Alaska Timber Insurance Exchange

2417 Tongass Avenue, Suite 214
Ketchikan, Alaska 99901
FAX (907) 225-9454
(907) 225-9451

March 22, 2010

The Honorable Senator Paskvan
State Capitol Room 7
Juneau AK, 99801

Re: Senate Bill 303

Dear Senator Paskvan:

This letter is to express concerns that the Alaska Timber Insurance Exchange has about Senate Bill 303.

Senate Bill 303 would weaken the exclusive remedy provision in the Alaska workers' compensation statutes. The exclusive remedy provisions currently in place prevent, in most instances, an employee of a subcontractor or a contractor from bringing a third party action against either a project owner or contractor that their employer is working for.

An entity that qualifies as a project owner under the Alaska workers' compensation statutes is considered an employer for exclusive remedy purposes for the employees of either a contractor or subcontractor working for them. This also applies to a contractor in relation to a subcontractor.

Senate Bill 303 would take away these exclusive remedy protections from project owners or contractors even if they were liable for the workers' compensation benefits of an injured employee of a contractor or subcontractor. Currently, a project owner or contractor can become liable for the workers' compensation benefits of a contractor or subcontractor's employees if the contractor or subcontractor does not have workers' compensation insurance.

Prior to the passage of Senate Bill 323 in 2004, project owners and contractors were not treated as employers for exclusive remedy purposes, i.e. an injured employee of a contractor or subcontractor could bring a third party action against a project owner that hired the contractor and subcontractor. Likewise, an injured

Alaska Timber Insurance Exchange

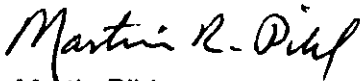
RE: Senate Bill 303

Page 2

employee of a subcontractor could bring a third party action against the contractor that hired their employer.

The Alaska Timber Insurance Exchange feels that the existing workers' compensation laws in Alaska provide fair benefits for injured workers without exposing employers, contractors or project owners to excessive liabilities. The proposed changes contained in Senate Bill 303 would add uncertainty and possible expense for those entities that hire contractors or subcontractors to do work for them.

Sincerely,



Martin Pihl

Chairman, Alaska Timber Insurance Exchange Board of Governors

cc: Alaska Timber Insurance Exchange Board of Governors
Alaska Timber Exchange Management Corporation Board of Directors

March 25, 2010

Senator Joe Paskvan, Chair
Senate Labor & Commerce Committee
State Capitol
Juneau, AK 99802

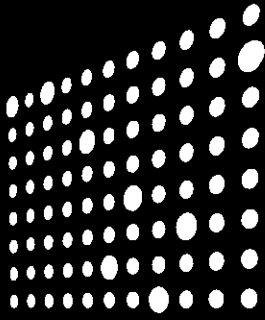
RE: SB 303

Chair Paskvan and Members of the Senate Labor & Commerce Committee,

The Alaska State Chamber in accordance with our legislative position opposes Senate Bill 303 regarding exclusive liability. This position was adopted at the annual legislative fly-in this past fall. This position supports the change regarding exclusive liability made by the legislature in 2004. For your review, please find attached our legislative position on the issue.

Current law obligates the immediate employer and other project participants to pay an injured employee's workers' compensation benefits regardless of fault. In the unfortunate circumstance of an injury, a worker has clear understanding about remedies being provided under the workers' compensation system. Prior to 2004, many subcontractors employed by a larger company (project owner) or employer, were not required to carry worker's compensation insurance. Under current law, which passed in 2004, all employees including subcontractors now carry worker's compensation insurance. This requirement now insures all workers working on the job regardless of who may be their direct employer. Correspondingly, workers' compensation benefits-the employers associated with the project-is the exclusive remedy for potentially liability

Prior to 2004, project owners, contractors and their subs were expending tremendous resources in segregating project and safety programs to defend against potential tort liability. Alaska courts have adopted of what is referred to as the retained control doctrine. Prior to the 2004 reform, parties other than an employee's immediate employer were liable in tort for any injury to an employee of an independent contractor if the party retains any amount of control over the work, including the right to review the contractor's safety practices. See for example, *Moloso v. State*, 644 P.2d 205 (Alaska 1982). In essence, injured employees used the retained control doctrine to support tort claims against the project owners and other parties that had done nothing more than try to enforce reasonable safety practices during the performance of a contractor's work.



Headquarters
217 2nd Street
Suite 201
Juneau
Alaska 99801
(907) 586-2323
FAX 463-5515

Regional Office
601 W. 5th Ave.
Suite 700
Anchorage
Alaska 99501
(907) 278-2722
FAX 278-6643

In practice, project owners and contractors attempted to avoid tort liability by limiting their involvement with each other's safety programs and work performance. In other words, prior to 2004 the law actually discouraged project owners and other project participants from implementing and enforcing coordinated safe work practices.

Under current law, project participants can take an integrated approach to completion of a project and can integrate safety programs. That is, project owners, contractors and subcontractors work closely together to ensure that project specifications and safety standards are met and that all work is completed in a successful and safe manner.

Second, the Alaska Workers' Compensation Act is intended to provide injured workers with reasonable compensation for their work related injuries without regard to fault or the cause of the injury. Some may claim that without the risk of exposure to tort damages, the project owners and other project participants have had little incentive to implement and enforce safe work practices. As previously stated, the new law has allowed for increased safety awareness and coordinated safety programs interconnecting subcontractors and project owners together. The Alaska State Chamber of Commerce has been steadfast advocates of reducing workers' compensation (wc) expenses particularly wc insurance; however, continued improvement on insurance rates mean continued improvement on workplace safety.

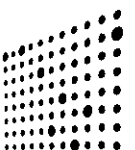
The tort system is not the only available means to punish companies that violate safety practices. The Department of Labor, the Oil and Gas Commission and other State agencies have authority to fine companies that violate State safety standards. Those agencies also have the authority to shut down projects that pose a safety hazard to employees. When project owners, their contractors and subcontractors work in an integrated manner, all companies involved in the contracting chain are subject to the fines and other remedies of state agencies. This is a much more efficient, credible and cost effective means of policing job safety.

At this time and in accordance with our legislative position adopted this past fall, we cannot support SB 303.

Best Regards,



Wayne A. Stevens
President/CEO



**Alaska State Chamber of Commerce
2010 Position**

Support Workers' Compensation Exclusive Liability Statute

The Chamber supports current Alaska law making compensation benefits an injured worker's exclusive remedy for on-the-job injuries. The State Chamber will oppose any legislation introduced to remove the exclusive liability language described above.