

STATE OF OKLAHOMA

1st Session of the 47th Legislature (1999)

SENATE BILL NO. 487

By: Fair

AS INTRODUCED

An Act relating to workers compensation; amending Section 29, Chapter 349, O.S.L. 1993, as last amended by Section 381, Chapter 133, O.S.L. 1997 (21 O.S. Supp. 1998, Section 1663), which relates to workers' compensation fraud; deleting crime and penalty relating to certificates of non-coverage; amending 85 O.S. 1991, Section 11, as last amended by Section 5, Chapter 361, O.S.L. 1997 (85 O.S. Supp. 1998, Section 11), which relates to requirements to provide workers' compensation coverage; deleting optional procedure for certificates of non-coverage; clarifying language; repealing Section 20, Chapter 349, O.S.L. 1993, as last amended by Section 16, Chapter 363, O.S.L. 1996, and Section 18, Chapter 361, O.S.L. 1997 (40 O.S. Supp. 1998, Sections 415.1 and 415.2), which relate to certificates of non-coverage by workers' compensation insurance; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY Section 29, Chapter 349, O.S.L. 1993, as last amended by Section 381, Chapter 133, O.S.L. 1997 (21 O.S. Supp. 1998, Section 1663), is amended to read as follows:

Section 1663. A. Any person who commits workers' compensation fraud, upon conviction, shall be guilty of a felony. The fine for a violation of this section shall not exceed Five Thousand Dollars (\$5,000.00).

B. For the purposes of this section, workers' compensation fraud shall include, but not be limited to, any act or omission prohibited by subsection C of this section and committed by a person with the intent to injure, defraud, or deceive another with respect to any of the following:

1. A claim for payment or other benefit pursuant to a contract of insurance;

2. An application for the issuance of a contract of insurance;
3. The rating of a contract of insurance or any risk associated with the contract;
4. Premiums paid on any contract of insurance whether or not the contract was actually issued;
5. Payments made in accordance with the terms of a contract of insurance;
6. An application for any license which is required by the Oklahoma Insurance Code, Title 36 of the Oklahoma Statutes;
7. An application for a license which is required for the organization, operation or maintenance of a health maintenance organization pursuant to Section 2501 et seq. of Title 63 of the Oklahoma Statutes;
8. A request for any approval, license, permit or permission required by the Workers' Compensation Act, by the rules of the Workers' Compensation Court or by the rules of the Workers' Compensation Court Administrator necessary to secure compensation as required by Section 61 of Title 85 of the Oklahoma Statutes;
9. The financial condition of an insurer or purported insurer;
10. The acquisition of any insurer; or
11. A contract of insurance ~~or a Certification of Non-Coverage Under the Workers' Compensation Act.~~

C. A person is guilty of workers' compensation fraud who:

1. Presents, causes to be presented or intends to present to another, any statement as part of or in support of any of the purposes described in subsection B of this section knowing that such statement contains any false, fraudulent, incomplete or misleading information concerning any fact or thing material to the purpose for the statement;
2. Assists, abets, solicits or conspires with another to prepare or make any statement that is intended to be presented to, used by or relied upon by another in connection with or in support

of any of the purposes described in subsection B of this section knowing that such statement contains any false, fraudulent, incomplete or misleading information concerning any fact or thing material to the purpose of the statement;

3. Conceals, attempts to conceal or conspires to conceal any information concerning any fact material to any of the purposes described in subsection B of this section;

4. Solicits, accepts or conspires to solicit or accept new or renewal insurance risks by or for an insolvent insurer;

5. Removes, attempts to remove or conspires to remove the assets or records of the insurer or a material part thereof, from the place of business of the insurer or from a place of safekeeping of the insurer;

6. Conceals, attempts to conceal or conspires to conceal the assets or records of the insurer or a material part thereof;

7. Diverts, attempts to divert, or conspires to divert funds of an insurer or other person in connection with:

- a. a contract of insurance,
- b. the business of an insurer, or
- c. the formation, acquisition or dissolution of an insurer;

8. Solicits, accepts or conspires to solicit or accept any benefit in exchange for violating any provision of this section;

9. Conceals, attempts to conceal, conspires to conceal or fails to disclose any change in any material fact, circumstance or thing for which there is a duty to disclose to another; or

10. Alters, falsifies, forges, distorts, counterfeits or otherwise changes any material statement, form, document, contract, application, certificate, or other writing with the intent to defraud, deceive, or mislead another.

D. It shall not be a defense to an allegation of a violation of this section that the person accused did not have a contractual relationship with the insurer.

E. For the purposes of this section:

1. "Contract of insurance" includes, but is not limited to, workers' compensation insurance or any other means of securing compensation permitted by the Workers' Compensation Act or reinsurance for such insurance or other means of securing compensation;

2. "Insurer" includes, but is not limited to, any person who is engaged in the business of making contracts of insurance; and

3. "Statement" includes, but is not limited to, any oral, written, computer-generated or otherwise produced notice, proof of loss, bill of lading, receipt for payment, invoice, account, certificate, survey affidavit, book, paper, writing, estimate of property damage, bill for services, diagnosis, prescription, medical record, x-ray, test result or other evidence of loss, injury or expense.

SECTION 2. AMENDATORY 85 O.S. 1991, Section 11, as last amended by Section 5, Chapter 361, O.S.L. 1997 (85 O.S. Supp. 1998, Section 11), is amended to read as follows:

Section 11. A. Every employer subject to the provisions of the Workers' Compensation Act shall pay, or provide as required by the Workers' Compensation Act, compensation according to the schedules of the Workers' Compensation Act for the disability or death of an employee resulting from an accidental personal injury sustained by the employee arising out of and in the course of employment, without regard to fault as a cause of such injury, and in the event of disability only, except as follows:

1. An injury occasioned by the willful intention of the injured employee to bring about injury to himself or herself or another;

2. An injury resulting directly from the willful failure of the injured employee to use a guard or protection against accident furnished for use pursuant to any statute or by order of the Commissioner of Labor;

3. An injury resulting directly from the use or abuse of alcohol, illegal drugs or chemicals, or the abuse of prescription drugs; provided, this paragraph shall only apply when the use or abuse rendered the employee incapable of acting in the manner in which an ordinarily prudent and cautious person, in full possession of his or her faculties, and using reasonable care, would have acted at the time of the injury. For the purposes of this paragraph, post-accident alcohol or drug testing results shall be admissible as evidence; and

4. Except for innocent victims, an injury caused by a prank, horseplay, or similar willful or intentional behavior.

B. Liability of any person, firm, or corporation having an interest in the subject matter, employers and contracting employers, general or intermediate, for compensation under the Workers' Compensation Act, when other than the immediate employer of the injured employee, shall be as follows:

1. The independent contractor shall, at all times, be liable for compensation due to his or her direct employees, or the employees of any subcontractor of ~~such~~ the independent contractor, and the principal employer shall also be liable in the manner hereinafter specified for compensation due all direct employees, employees of the independent contractors, subcontractors, or other employees engaged in the general employer's business; provided, however, if an independent contractor relies in good faith on proof of a valid workers' compensation insurance policy issued to a subcontractor of the independent contractor ~~or on proof of a Certification of Non-Coverage Under the Workers' Compensation Act filed by the subcontractor with the Commissioner of Labor under~~

~~Section 415.1 of Title 40 of the Oklahoma Statutes, then the independent contractor shall not be liable for injuries of any employees of the subcontractor. Provided further, such independent contractor shall not be liable for injuries of any subcontractor of the independent contractor unless an employer-employee relationship is found to exist by the Workers' Compensation Court despite the filing of a Certification of Non-Coverage Under the Workers' Compensation Act.~~

2. The person entitled to such compensation shall have the right to recover the same directly from his or her immediate employer, the independent contractor or intermediate contractor, and such claims may be presented against all such persons in one proceeding. If it appears in ~~such~~ a proceeding that the principal employer has failed to require a compliance with the Workers' Compensation Act of this state, by the independent contractor, ~~then such~~ the employee may proceed against ~~such~~ the principal employer without regard to liability of any independent, intermediate, or other contractor; provided, however, if a principal employer relies in good faith on proof of a valid workers' compensation insurance policy issued to an independent contractor of the employer or to a subcontractor of the independent contractor ~~or on proof of a Certification of Non-Coverage Under the Workers' Compensation Act filed by the independent contractor or subcontractor with the Commissioner of Labor under Section 415.1 of Title 40 of the Oklahoma Statutes,~~ then the principal employer shall not be liable for injuries of any employees of the independent contractor or subcontractor. Provided further, such principal employer shall not be liable for injuries of any independent contractor of the employer or of any subcontractor of the independent contractor unless an employer-employee relationship is found to exist by the Workers' Compensation Court ~~despite the filing of a Certification of Non-Coverage Under the Workers' Compensation Act.~~ Provided, however, in

any proceeding ~~where~~ in which compensation is awarded against the principal employer under the provisions ~~hereof~~ of this section, ~~such~~ the award shall not preclude the principal employer from recovering the same, and all expense in connection with ~~said~~ that proceeding from any independent contractor, intermediate contractor, or subcontractor whose duty it was to provide security for the payment of ~~such~~ compensation, and ~~such~~ the recovery may be had by supplemental proceedings in the cause before the Court or by an independent action in any court of competent jurisdiction to enforce liability of contracts.

3. Where work is performed on a single family residential dwelling or its premises occupied by the owner, or for a farmer whose cash payroll for wages, excluding supplies, materials and equipment, for the preceding calendar year did not exceed One Hundred Thousand Dollars (\$100,000.00), ~~such~~ the owner or farmer shall not be liable for compensation under the Workers' Compensation Act. ~~Such~~ The owner or farmer shall not be liable to the employee of any independent contractor or subcontractor, where applicable, or the farmer's own employee.

4. Where compensation is payable for an occupational disease, the employer in whose employment the employee was last injuriously exposed to the hazards of such disease and the insurance carrier, if any, on the risk when such employee was last so exposed under such employer, shall alone be liable therefor, without right to contribution from any prior employer or insurance carrier, provided, however, that in the case of silicosis or asbestosis, the only employer and insurance carrier liable shall be the last employer in whose employment the employee was last exposed to harmful quantities of silicon dioxide (SiO₂) dust on each of at least sixty (60) days or more, and the insurance carrier, if any, on the risk when the employee was last so exposed under such employer.

SECTION 3. REPEALER Section 20, Chapter 349, O.S.L. 1993, as last amended by Section 16, Chapter 363, O.S.L. 1996, and Section 18, Chapter 361, O.S.L. 1998 (40 O.S. Supp. 1998, Sections 415.1 and 415.2), are hereby repealed.

SECTION 4. This act shall become effective November 1, 1999.

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