

**OKLAHOMA STATE SENATE
STANDING
COMMITTEE REPORT**

April 4, 2006

COMMITTEE ON JUDICIARY

HB 2684

By: Newport of the House and Anderson of the Senate

Title: Workers' compensation; providing for execution of certain affidavits by certain persons and providing procedures; allowing fees. Emergency.

Co-Authored By:

Recommendation: **DO PASS AS AMENDED**

Senator Charlie Laster, Chair

Amendments:

1. Page 3, line 3 through page 6, line 29, by deleting Section 3 and inserting a new section and by renumbering subsequent section:

“SECTION 3. AMENDATORY 85 O.S. 2001, 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 which occurs when an employee is using substances defined and consumed pursuant to Section 465.20 of Title 63 of the Oklahoma Statutes, or is using or abusing alcohol or illegal drugs, or is illegally using chemicals; provided, this paragraph shall only apply when the employee is unable to prove by a preponderance of the evidence that the substances, alcohol, illegal drugs, or illegally used chemicals were not the proximate cause of the injury or accident. 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 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~~ Certificate of Non-Coverage Under the Workers' Compensation Act, filed by the subcontractor with the Commissioner of Labor, or on proof of an Affidavit of Non-Coverage Exempt Status Under the Workers' Compensation Act filed properly executed by the subcontractor with the Commissioner of Labor under Section 415.1 of Title 40 of the Oklahoma

~~Statutes 1 of this act~~, 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 Certificate of Non-Coverage Under the Workers' Compensation Act or the execution of a Certification an Affidavit of Non-Coverage Exempt Status Under the Workers' Compensation Act.

2. The person entitled to such compensation shall have the right to recover the same directly from the person's 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 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 employee may proceed against such 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~~ Certificate of Non-Coverage Under the Workers' Compensation Act, filed by the subcontractor with the Commissioner of Labor, or on proof of an Affidavit of Non-Coverage Exempt Status Under the Workers' Compensation Act filed properly executed by the independent contractor or subcontractor ~~with the Commissioner of Labor under Section 415.1 of Title 40 of the Oklahoma Statutes 1 of this act~~, 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 Certificate of Non-Coverage Under the Workers' Compensation Act or the execution of a ~~Certification~~

an Affidavit of Non-Coverage Exempt Status Under the Workers' Compensation Act. Provided, however, in any proceeding where compensation is awarded against the principal employer under the provisions hereof, such award shall not preclude the principal employer from recovering the same, and all expense in connection with said proceeding from any independent contractor, intermediate contractor or subcontractor whose duty it was to provide security for the payment of such compensation, and such 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 owner or farmer shall not be liable for compensation under the Workers' Compensation Act. Such 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.

5. Where compensation is payable for an injury resulting from cumulative trauma, the last employer in whose employment the employee was last injuriously exposed to the trauma during a period of at least ninety (90) days or more, and the insurance carrier, if any, on the risk

when the employee was last so exposed under such employer, shall alone be liable therefor, without right to contribution from any prior employer or insurance carrier. If there is no employer in whose employment the employee was injuriously exposed to the trauma for a period of at least ninety (90) days, then the last employer in whose employment the employee was last injuriously exposed to the trauma and the insurance carrier, if any, on the risk when such employee was last so exposed under such employer, shall be liable therefor, with right to contribution from any prior employer or insurance carrier.