ENGROSSED HOUSE
BILL NO. 3003

By: Morgan (Fred), Sherrer, Jackson, Bingman, Piatt and Benge of the House

and

Leftwich of the Senate

(labor - amending 85 O.S., Section 11 - liability for compensation - effective date - emergency)

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 415.3 of Title 40, unless there is created a duplication in numbering, reads as follows:

A. Any person who is not required to be covered under a workers' compensation insurance policy or other plan for the payment of workers' compensation may apply to the Commissioner of Labor for a "Certificate of Noncoverage Under the Workers' Compensation Act". Applications shall be made on forms prescribed by the Commissioner and shall be accompanied by a nonrefundable application fee in an amount to be set by the Commissioner by rule not to exceed Ten Dollars ($10.00) for a one-year certificate or Twenty Dollars ($20.00) for a two-year certificate.

B. The Commissioner of Labor shall issue a certificate to any individual whom the Commissioner finds, after reasonable inquiry, to be exempt from the definition of employee under Section 3 of Title 85 of the Oklahoma Statutes. Issuance of the certificate by the Commissioner shall establish a rebuttable presumption that the filer is not an employee for purposes of the Workers' Compensation Act.

C. The Commissioner of Labor shall develop necessary procedures for determining eligibility for the certificates.

D. Except as otherwise provided in Section 11 of Title 85 of the Oklahoma Statutes, the filing of a certificate shall not affect the rights or coverage of any employee of the individual filing the certificate.

E. 1. Knowingly providing false information to the Department of Labor for the purposes of obtaining a Certificate of Noncoverage Under the Workers' Compensation Act shall constitute a misdemeanor punishable by a fine not to exceed One Thousand Dollars ($1,000.00).

2. Application forms for each certificate shall conspicuously state on the front thereof in at least ten-point, bold-faced print that it is a crime to falsify information on the form.

3. The Commissioner of Labor shall immediately notify the Workers' Compensation Fraud Unit in the Office of the Attorney General of any violations or suspected violations of this section. The Commissioner shall cooperate with the Fraud Unit in any investigation involving certificates issued pursuant to this section.

F. Application fees collected pursuant to this section shall be deposited in the State Treasury to the credit of the Workers' Compensation Enforcement Revolving Fund.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 415.4 of Title 40, unless there is created a duplication in numbering, reads as follows:

In addition to any other penalty prescribed by law, any employer who knowingly and willfully requires an employee or subcontractor to obtain a Certificate of Noncoverage Under the Workers' Compensation Act under Section 1 of this act when the employer knows that the employee or subcontractor is not eligible for a Certificate of Noncoverage Under the Workers' Compensation Act shall be liable for a civil penalty, to be assessed by the Commissioner of Labor or the

Commissioner's designee, of not more than Five Hundred Dollars ($500.00) for a first offense, and shall be liable for a civil penalty of not more than One Thousand Dollars ($1,000.00) for a second or subsequent offense. All civil penalties collected pursuant to this section shall be deposited into the Workers' Compensation Enforcement Revolving Fund.

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~~ Noncoverage Under the Workers' Compensation Act filed by the subcontractor with the Commissioner of Labor under Section ~~415.1~~ 1 of ~~Title 40 of the Oklahoma Statutes~~ 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 ~~Certification~~ Certificate of ~~Non-Coverage~~ Noncoverage 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~~ Noncoverage Under the Workers' Compensation Act filed by the independent contractor or subcontractor with the Commissioner of Labor under Section ~~415.1~~ 1 of ~~Title 40 of the Oklahoma Statutes~~ 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 ~~Certification~~ Certificate of ~~Non-Coverage~~ Noncoverage 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 (SiO 2) 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.

SECTION 4. This act shall become effective July 1, 2006.

SECTION 5. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the House of Representatives the 13th day of March, 2006.

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Presiding Officer of the House of Representatives

Passed the Senate the ____ day of _____, 2006.

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Presiding Officer of the Senate