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THE STATE SENATE
Monday, April 10, 2006

ENGROSSED
House Bill No. 2684
As Amended

ENGROSSED HOUSE BILL NO. 2684 - By: NEWPORT of the House and
ANDERSON of the Senate.

An Act relating to workers' compensation; providing for
execution of certain affidavits by certain persons and
providing procedures; authorizing the Insurance Commissioner
to collect certain fees; providing for deposit of certain
fees; prohibiting certain activities; providing penalties;
amending 85 O.S. 2001, Section 11, which relates to
liability for compensation; modifying reference; providing
for codification; and declaring an 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 924.4 of Title 36, 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 execute an Affidavit of Exempt Status
Under the Workers' Compensation Act. The affidavit shall be a form
prescribed by the Insurance Commissioner. The affidavit shall be
available on the Insurance Department's web site, or shall be mailed
to any person upon request and payment by the requestor of a
nonrefundable processing fee in an amount to be set by the

1 Commissioner by rule not to exceed Two Dollars and fifty cents
2 (\$2.50).

3 B. Execution of the affidavit shall establish a rebuttable
4 presumption that the executor is not an employee for purposes of the
5 Workers' Compensation Act.

6 C. Except as otherwise provided in Section 11 of Title 85 of
7 the Oklahoma Statutes, the execution of an affidavit shall not
8 affect the rights or coverage of any employee of the individual
9 executing the affidavit.

10 D. 1. Knowingly providing false information on an Affidavit of
11 Exempt Status Under the Workers' Compensation Act shall constitute a
12 misdemeanor punishable by a fine not to exceed One Thousand Dollars
13 (\$1,000.00).

14 2. Affidavits shall conspicuously state on the front thereof in
15 at least ten-point, bold-faced print that it is a crime to falsify
16 information on the form.

17 3. The Insurance Commissioner shall immediately notify the
18 Workers' Compensation Fraud Unit in the Office of the Attorney
19 General of any violations or suspected violations of this section.
20 The Commissioner shall cooperate with the Fraud Unit in any
21 investigation involving affidavits executed pursuant to this
22 section.

1 E. Application fees collected pursuant to this section shall be
2 deposited in the State Treasury to the credit of the State Insurance
3 Commissioner's Revolving Fund.

4 SECTION 2. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 924.5 of Title 36, unless there
6 is created a duplication in numbering, reads as follows:

7 In addition to any other penalty prescribed by law, any employer
8 who knowingly and willfully requires an employee or subcontractor to
9 execute an affidavit under Section 1 of this act when the employer
10 knows that the employee or subcontractor is required to be covered
11 under a workers' compensation insurance policy or other plan for the
12 payment of workers' compensation shall be liable for a civil
13 penalty, to be assessed by the Insurance Department, of not more
14 than Five Hundred Dollars (\$500.00) for a first offense, and shall
15 be liable for a civil penalty of not more than One Thousand Dollars
16 (\$1,000.00) for a second or subsequent offense. All civil penalties
17 collected pursuant to this section shall be deposited into the State
18 Insurance Commissioner's Revolving Fund.

19 SECTION 3. AMENDATORY 85 O.S. 2001, Section 11, is
20 amended to read as follows:

21 Section 11. A. Every employer subject to the provisions of the
22 Workers' Compensation Act shall pay, or provide as required by the
23 Workers' Compensation Act, compensation according to the schedules

1 of the Workers' Compensation Act for the disability or death of an
2 employee resulting from an accidental personal injury sustained by
3 the employee arising out of and in the course of employment, without
4 regard to fault as a cause of such injury, and in the event of
5 disability only, except as follows:

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

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

12 3. An injury which occurs when an employee is using substances
13 defined and consumed pursuant to Section 465.20 of Title 63 of the
14 Oklahoma Statutes, or is using or abusing alcohol or illegal drugs,
15 or is illegally using chemicals; provided, this paragraph shall only
16 apply when the employee is unable to prove by a preponderance of the
17 evidence that the substances, alcohol, illegal drugs, or illegally
18 used chemicals were not the proximate cause of the injury or
19 accident. For the purposes of this paragraph, post-accident alcohol
20 or drug testing results shall be admissible as evidence; and

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

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

6 1. The independent contractor shall, at all times, be liable
7 for compensation due to his or her direct employees, or the
8 employees of any subcontractor of such independent contractor, and
9 the principal employer shall also be liable in the manner
10 hereinafter specified for compensation due all direct employees,
11 employees of the independent contractors, subcontractors, or other
12 employees engaged in the general employer's business; provided,
13 however, if an independent contractor relies in good faith on proof
14 of a valid workers' compensation insurance policy issued to a
15 subcontractor of the independent contractor or on proof of a
16 ~~Certification~~ Certificate of Non-Coverage Under the Workers'
17 Compensation Act, filed by the subcontractor with the Commissioner
18 of Labor, or on proof of an Affidavit of Non-Coverage Exempt Status
19 Under the Workers' Compensation Act filed properly executed by the
20 subcontractor ~~with the Commissioner of Labor~~ under Section 415.1 of
21 ~~Title 40 of the Oklahoma Statutes~~ 1 of this act, then the
22 independent contractor shall not be liable for injuries of any
23 employees of the subcontractor. Provided further, such independent

1 contractor shall not be liable for injuries of any subcontractor of
2 the independent contractor unless an employer-employee relationship
3 is found to exist by the Workers' Compensation Court despite the
4 filing of a Certificate of Non-Coverage Under the Workers'
5 Compensation Act or the execution of a ~~Certification~~ an Affidavit of
6 Non-Coverage Exempt Status Under the Workers' Compensation Act.

7 2. The person entitled to such compensation shall have the
8 right to recover the same directly from the person's immediate
9 employer, the independent contractor or intermediate contractor, and
10 such claims may be presented against all such persons in one
11 proceeding. If it appears in such proceeding that the principal
12 employer has failed to require a compliance with the Workers'
13 Compensation Act of this state, by the independent contractor, then
14 such employee may proceed against such principal employer without
15 regard to liability of any independent, intermediate or other
16 contractor; provided, however, if a principal employer relies in
17 good faith on proof of a valid workers' compensation insurance
18 policy issued to an independent contractor of the employer or to a
19 subcontractor of the independent contractor or on proof of a
20 ~~Certification~~ Certificate of Non-Coverage Under the Workers'
21 Compensation Act, filed by the subcontractor with the Commissioner
22 of Labor, or on proof of an Affidavit of Non-Coverage Exempt Status
23 Under the Workers' Compensation Act ~~filed~~ properly executed by the

1 independent contractor or subcontractor ~~with the Commissioner of~~
2 ~~Labor~~ under Section 415.1 of Title 40 of the Oklahoma Statutes 1 of
3 this act, then the principal employer shall not be liable for
4 injuries of any employees of the independent contractor or
5 subcontractor. Provided further, such principal employer shall not
6 be liable for injuries of any independent contractor of the employer
7 or of any subcontractor of the independent contractor unless an
8 employer-employee relationship is found to exist by the Workers'
9 Compensation Court despite the filing of a Certificate of Non-
10 Coverage Under the Workers' Compensation Act or the execution of a
11 Certification an Affidavit of Non-Coverage Exempt Status Under the
12 Workers' Compensation Act. Provided, however, in any proceeding
13 where compensation is awarded against the principal employer under
14 the provisions hereof, such award shall not preclude the principal
15 employer from recovering the same, and all expense in connection
16 with said proceeding from any independent contractor, intermediate
17 contractor or subcontractor whose duty it was to provide security
18 for the payment of such compensation, and such recovery may be had
19 by supplemental proceedings in the cause before the Court or by an
20 independent action in any court of competent jurisdiction to enforce
21 liability of contracts.

22 3. Where work is performed on a single family residential
23 dwelling or its premises occupied by the owner, or for a farmer

1 whose cash payroll for wages, excluding supplies, materials and
2 equipment, for the preceding calendar year did not exceed One
3 Hundred Thousand Dollars (\$100,000.00), such owner or farmer shall
4 not be liable for compensation under the Workers' Compensation Act.
5 Such owner or farmer shall not be liable to the employee of any
6 independent contractor or subcontractor, where applicable, or the
7 farmer's own employee.

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

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

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

11 SECTION 4. It being immediately necessary for the preservation
12 of the public peace, health and safety, an emergency is hereby
13 declared to exist, by reason whereof this act shall take effect and
14 be in full force from and after its passage and approval.

15 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 4-4-06 - DO PASS,
16 As Amended.