

1 STATE OF OKLAHOMA

2 2nd Session of the 53rd Legislature (2012)

3 HOUSE BILL 2317

By: Key

4
5
6 AS INTRODUCED

7 An Act relating to workers' compensation; amending 85
8 O.S. 2011, Section 352, which relates to penalties
9 for the failure of an employer to secure
10 compensation; modifying penalties; providing
11 Commissioner of Labor discretion to assess and
12 collect penalty proceeds; specifying exception;
13 requiring employers to post notice of coverage;
14 authorizing Commissioner to enter upon certain
15 premises; providing penalties for failure to post
16 notice of workers' compensation coverage; directing
17 Commissioner to provide for administrative hearing;
18 specifying requirements; authorizing the award of
19 certain proceeds to an individual reporting
20 violations; prohibiting the release of the identity
21 of reporter; specifying certain information shall not
22 be subject to the Oklahoma Open Records Act;
23 directing Commissioner of Labor to approve list of
24 hazardous industries; specifying requirements; and
providing an effective date.

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

SECTION 1. AMENDATORY 85 O.S. 2011, Section 352, is
amended to read as follows:

Section 352. A. In addition to any other penalty prescribed by
law, any employer who fails to secure compensation required by
Section ~~51~~ 351 of this ~~act~~ title shall be liable for a civil

1 penalty, to be assessed by the Commissioner of Labor or designee, ~~of~~
2 ~~not more than Two Hundred Fifty Dollars (\$250.00) per employee for a~~
3 ~~first offense, unless the employer secures workers' compensation~~
4 ~~insurance within thirty (30) days after receiving notice of the~~
5 ~~violation. If the employer secures workers' compensation insurance~~
6 ~~within thirty (30) days after receiving notice of the violation, the~~
7 ~~employer shall be liable for a civil penalty of not more than~~
8 ~~Seventy-five Dollars (\$75.00) per employee. An employer shall be~~
9 ~~liable for a civil penalty of not more than One Thousand Dollars~~
10 ~~(\$1,000.00) per employee for a second or subsequent offense.~~
11 ~~Provided, the maximum civil penalty shall not exceed Ten Thousand~~
12 ~~Dollars (\$10,000.00) for all related series of violations. All~~
13 ~~civil penalties collected shall be deposited in the Department of~~
14 ~~Labor Revolving Fund and shall be used to enforce the provisions of~~
15 ~~the Workers' Compensation Code.~~

16 B. The civil penalty for the first offense shall be One
17 Thousand Dollars (\$1,000.00) per employee for employers engaged in
18 hazardous industries and Five Hundred Dollars (\$500.00) per employee
19 for all other employers. Hazardous industries are those industries
20 identified in the current list of the most hazardous industries
21 approved by the Commissioner of Labor pursuant to subsection G of
22 this section. An additional One Hundred Dollars (\$100.00) per
23 employee shall be assessed for each month the employer is not in
24 compliance with Section 351 of this title, up to thirty-six (36)

1 months. The total civil penalty shall be doubled for subsequent
2 offenses.

3 C. The Commissioner of Labor or designee shall assess and
4 collect any civil penalty incurred under subsection B of this
5 section and may remit, mitigate or negotiate the penalty as set
6 forth in this subsection. The gross civil penalty shall be
7 decreased by ten percent (10%) if the employer obtains coverage
8 within thirty (30) days of the citation. The gross civil penalty
9 shall be decreased by ten percent (10%) if the employer pays the
10 assessed civil penalty within thirty (30) days of the citation. The
11 gross civil penalty may be decreased by thirty percent (30%) at the
12 discretion of the Commissioner of Labor or designee upon
13 consideration of the appropriateness of the penalty in light of the
14 life of the business of the employer charged, the gravity of the
15 violation, and the extent to which the employer charged has complied
16 with the provisions of Section 351 of this title or has otherwise
17 attempted to remedy the consequences of the violation. The
18 Commissioner of Labor or designee shall not remit, mitigate or
19 negotiate the penalty pursuant to this subsection if an injury
20 occurred during the period of noncompliance.

21 D. After an employer is cited for ~~two offenses of~~ failing to
22 obtain workers' compensation insurance and fails to obtain coverage
23 within thirty (30) days of the ~~second~~ citation, the Commissioner of
24 Labor shall issue cease and desist orders, in accordance with the

1 Department of Labor administrative rules and procedures, against an
2 employer until the violating employer shall obtain workers'
3 compensation insurance for its employees. The Commissioner of Labor
4 shall have the authority to require the cessation of activities of
5 an employer whose employees are not covered by workers' compensation
6 insurance until the violating employer shall obtain workers'
7 compensation insurance for its employees; provided, that an employer
8 who has made application for workers' compensation coverage with
9 either CompSource Oklahoma or a private insurance carrier, and who,
10 through no fault of the employer, has not received notice that such
11 coverage has commenced, shall not be made to cease operations, as
12 provided for in this section, until a determination has been made
13 concerning the ~~employee's~~ employer's application for workers'
14 compensation coverage. Any order to cease and desist issued by the
15 Commissioner may be enforced in district court. The district court
16 may issue the Commissioner an injunction without bond, for the
17 purposes of enforcing this section.

18 ~~C. The Commissioner of Labor or designee shall assess and~~
19 ~~collect any civil penalty incurred under subsection A of this~~
20 ~~section and, in the Commissioner's discretion, may remit, mitigate~~
21 ~~or negotiate the penalty. In determining the amount of the penalty~~
22 ~~to be assessed, or the amount agreed upon in any negotiation,~~
23 ~~consideration shall be given to the appropriateness of such penalty~~
24 ~~in light of the life of the business of the employer charged, the~~

1 ~~gravity of the violation, and the extent to which the employer~~
2 ~~charged has complied with the provisions of Section 51 of this act~~
3 ~~or has otherwise attempted to remedy the consequences of the~~
4 ~~violation.~~

5 E. Every employer subject to the Workers' Compensation Code
6 shall post notice of compliance with Section 351 of this title in a
7 manner accessible to all employees in each establishment under the
8 control of the employer. The Commissioner of Labor or designee may
9 enter during business hours upon the premises of any employer
10 subject to the Workers' Compensation Code for the purpose of
11 determining whether the notice has been properly posted. Any
12 employer failing to post the notice required by this subsection
13 shall be punished by a fine not to exceed Five Hundred Dollars
14 (\$500.00) and each week the employer fails to post the notice shall
15 constitute a separate offense. The Commissioner of Labor shall
16 provide for an administrative proceeding, to be conducted according
17 to the Administrative Procedures Act, to determine the
18 appropriateness of the fine. All administrative fines collected
19 pursuant to this subsection shall be deposited to the Department of
20 Labor Revolving Fund.

21 F. Any individual who reports an employer who has failed to
22 secure compensation required by Section 351 of this title may be
23 awarded as much as twenty-five percent (25%) of the civil penalty
24 collected from the employer, up to Ten Thousand Dollars

1 (\$10,000.00), at the discretion of the Commissioner of Labor. The
2 Commissioner of Labor shall keep the identity of the individual
3 reporting the violation confidential and the information shall not
4 be subject to the Oklahoma Open Records Act, Section 24A.1 through
5 Section 24A.29 of Title 51 of the Oklahoma Statutes.

6 G. The Commissioner of Labor shall for each calendar year
7 approve a list of the most hazardous industries in the state by
8 North American Industry Classification System (NAICS) Codes based on
9 the most current data available from the Federal Occupational Health
10 and Safety Administration. The Commissioner of Labor shall approve
11 the annual list within forty-five (45) days after receipt of
12 national and state incident rates of nonfatal occupational injuries
13 by industry data from the United States Department of Labor, Bureau
14 of Labor Statistics. In computing the level of hazard, the
15 Commissioner of Labor shall include the following factors:

- 16 1. Total injuries;
- 17 2. Fatalities;
- 18 3. Number of fatal incidents;
- 19 4. High-experience modifiers; and
- 20 5. Other factors as determined by the Commissioner to indicate
21 a high-hazard industry.

22 SECTION 2. This act shall become effective November 1, 2012.

24 53-2-8884 SDR 01/04/12