

1 STATE OF OKLAHOMA

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

3 SENATE BILL 1878

By: Coates

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5
6 AS INTRODUCED

7 An Act relating to workers' compensation insurance;
8 amending 85 O.S. 2011, Section 352, which relates to
9 failure to obtain workers' compensation insurance;
10 modifying certain penalties; directing assessment and
11 collection of certain penalties; authorizing
12 modification of certain penalties under certain
13 circumstances; requiring notice of certain
14 compliance; creating fine to be assessed for failure
15 to provide certain notice; directing collection and
16 deposit of certain fines; authorizing award for
17 certain report; requiring approval of certain list;
18 requiring inclusion of specified factors in certain
19 list; and providing an effective date.

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

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

23 Section 352. A. In addition to any other penalty prescribed by
24 law, any employer who fails to secure compensation required by
25 Section ~~51~~ 351 of this ~~act~~ title shall be liable for a civil
26 penalty, to be assessed by the Commissioner of Labor or designee, ~~of~~
27 ~~not more than Two Hundred Fifty Dollars (\$250.00) per employee for a~~
28 ~~first offense, unless the employer secures workers' compensation~~

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

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

24

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

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

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

16 ~~C. The Commissioner of Labor or designee shall assess and~~
17 ~~collect any civil penalty incurred under subsection A of this~~
18 ~~section and, in the Commissioner's discretion, may remit, mitigate~~
19 ~~or negotiate the penalty. In determining the amount of the penalty~~
20 ~~to be assessed, or the amount agreed upon in any negotiation,~~
21 ~~consideration shall be given to the appropriateness of such penalty~~
22 ~~in light of the life of the business of the employer charged, the~~
23 ~~gravity of the violation, and the extent to which the employer~~
24 ~~charged has complied with the provisions of Section 51 of this act~~

1 ~~or has otherwise attempted to remedy the consequences of the~~
2 ~~violation.~~

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

18 F. Any individual who reports an employer who has failed to
19 secure compensation required by Section 351 of this title may be
20 awarded as much as twenty-five percent (25%) of the civil penalty
21 collected from the employer, up to Ten Thousand Dollars
22 (\$10,000.00), at the discretion of the Commissioner of Labor. The
23 Commissioner of Labor shall keep the identity of the individual
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1 reporting such violation confidential and such information shall not
2 be subject to the Oklahoma Open Records Act.

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

13 1. Total injuries;

14 2. Fatalities;

15 3. Number of fatal incidents;

16 4. High experience modifiers; and

17 5. Other factors as determined by the Commissioner to indicate

18 a high hazard industry.

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

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