

STATE OF OKLAHOMA

1st Session of the 56th Legislature (2017)

COMMITTEE SUBSTITUTE

FOR

HOUSE BILL NO. 2242

By: Mulready

COMMITTEE SUBSTITUTE

An Act relating to workers' compensation; amending Section 36, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2016, Section 36), which relates to liability other than that of immediate employer; modifying parties that are liable; providing for Affidavit of Exempt Status; providing for form; requiring form to be on website of the Workers' Compensation Commission; providing who is eligible to execute Affidavit; authorizing fee for execution of Affidavit; establishing rebuttable presumption; retaining rights and coverage for employees; providing penalty for providing false information of an Affidavit; requiring the Workers' Compensation Commission to provide notice of violations to the Workers' Compensation Fraud Unit; providing for remittance of fees; providing immunity for liability for good-faith reliance on certain proof; and declaring an emergency.

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

SECTION 1. AMENDATORY Section 36, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2016, Section 36), is amended to read as follows:

1 Section 36. A. If ~~a subcontractor~~ an individual or business
2 entity fails to secure compensation required by this ~~act~~ title, the
3 ~~prime contractor~~ party for whom work is being performed shall be
4 liable for compensation to the employees of the ~~subcontractor~~
5 individual or business entity unless there is an intermediate
6 ~~subcontractor~~ individual or business entity who has workers'
7 compensation coverage.

8 B. 1. Any ~~contractor or the contractor's~~ party for whom work
9 is being performed or the party's insurance carrier who shall become
10 liable for the payment of compensation on account of injury to or
11 death of an employee of ~~his or her subcontractor~~ an individual or
12 business entity may recover from the ~~subcontractor~~ individual or
13 business entity the amount of the compensation paid or for which
14 liability is incurred.

15 2. The claim for the recovery shall constitute a lien against
16 any monies due or to become due to the ~~subcontractor~~ individual or
17 business entity from the ~~prime contractor~~ party for whom work is
18 being performed.

19 3. A claim for recovery shall not affect the right of the
20 injured employee or the dependents of the deceased employee to
21 recover compensation due from the ~~prime contractor~~ party for whom
22 work is being performed or his or her insurance carrier.

23 C. 1. a. ~~When a sole proprietorship or partnership fails to~~
24 ~~elect to cover the sole proprietor or partners under~~

~~this act, the prime contractor is not liable under this act for injuries sustained by the sole proprietor or partners if the sole proprietor or partners are not employees of the prime contractor.~~

- b. ~~(1) A sole proprietor or the partners of a partnership who do not elect to be covered by this act and be deemed employees thereunder and who deliver to the prime contractor a current certification of noncoverage issued by the Commission shall be conclusively presumed not to be covered by the law or to be employees of the prime contractor during the term of his or her certification or any renewals thereof.~~
- ~~(2) A certificate of noncoverage may not be presented to a subcontractor who does not have workers' compensation coverage.~~
- ~~(3) This provision shall not affect the rights or coverage of any employees of the sole proprietor or of the partnership.~~

~~2. The prime contractor's insurance carrier shall not be liable for injuries to the sole proprietor or partners described in this section who have provided a current certification of noncoverage, and the carrier shall not include compensation paid by the prime~~

~~contractor to the sole proprietor or partners described above in
computing the insurance premium for the prime contractor.~~

~~3. a. Any prime contractor who after being presented with a
current certification of noncoverage by a sole
proprietor or partnership compels the sole proprietor
or partnership to pay or contribute to workers'
compensation coverage of that sole proprietor or
partnership shall be guilty of a misdemeanor.~~

~~b. Any prime contractor who compels a sole proprietor or
partnership to obtain a certification of noncoverage
when the sole proprietor or partnership does not
desire to do so shall be guilty of a misdemeanor.~~

~~c. Any applicant who makes a false statement when
applying for a certification of noncoverage or any
renewals thereof shall be guilty of a felony.~~

~~D. 1. A certification of noncoverage issued by the Commission
shall be valid for two (2) years after the effective date stated
thereon. Both the effective date and the expiration date shall be
listed on the face of the certificate by the Commission. The
certificate shall expire at midnight two (2) years from its issue
date, as noted on the face of the certificate.~~

~~2. The Commission may assess a fee not to exceed Fifty Dollars
(\$50.00) with each application for a certification of noncoverage or
any renewals thereof.~~

1 ~~3. Any certification of noncoverage issued by the Commission~~
2 ~~shall contain the social security number and notarized signature of~~
3 ~~the applicant. The notarization shall be in a form and manner~~
4 ~~prescribed by the Commission.~~

5 ~~4. The Commission may prescribe by rule forms and procedures~~
6 ~~for issuing or renewing a certification of noncoverage.~~

7 ~~E. If work is performed by an independent contractor on a~~
8 ~~single-family residential dwelling occupied by the owner, or the~~
9 ~~premises of such dwelling, or for a farmer whose cash payroll for~~
10 ~~wages, excluding supplies, materials and equipment, for the~~
11 ~~preceding calendar year did not exceed One Hundred Thousand Dollars~~
12 ~~(\$100,000.00), such owner or farmer shall not be liable for~~
13 ~~compensation under this act for injuries to the independent~~
14 ~~contractor or his or her employees~~ Any individual or business entity
15 that is not required to be covered under a workers' compensation
16 insurance policy or other plan for the payment of workers'
17 compensation may execute an Affidavit of Exempt Status under the
18 Administrative Workers' Compensation Act. The affidavit shall be a
19 form prescribed by the Workers' Compensation Commission and shall be
20 available on the Commission's website. The Commission may assess a
21 fee not to exceed Fifty Dollars (\$50.00) for each Affidavit
22 executed.

23 D. Execution of the affidavit shall establish a rebuttable
24 presumption that the executor or executor's agent is not an employee

1 for purposes of the Administrative Workers' Compensation Act and
2 that an individual or company possessing the affidavit is in
3 compliance and shall not be responsible for workers' compensation
4 claims made by the executor.

5 E. The execution of an affidavit shall not affect the rights or
6 coverage of any employee of the individual executing the affidavit.

7 F. 1. Knowingly providing false information on a notarized
8 Affidavit of Exempt Status under the Administrative Workers'
9 Compensation Act shall constitute a misdemeanor punishable by a fine
10 not to exceed One Thousand Dollars (\$1,000.00).

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

14 3. The Commission shall immediately notify the Workers'
15 Compensation Fraud Unit in the Office of the Attorney General of any
16 violations or suspected violations of this section. The Commission
17 shall cooperate with the Fraud Unit in any investigation involving
18 affidavits executed pursuant to this section.

19 G. Fees collected pursuant to subsection C of this section
20 shall be deposited in the State Treasury to the credit of the
21 Workers' Compensation Commission Revolving Fund.

22 H. If any employer relies in good faith on proof of a valid
23 workers' compensation insurance policy issued to a contractor of any
24 tier or on proof of an Affidavit of Exempt Status under this

1 section, the employer shall not be liable for injuries of any
2 employees of the contractor.

3 SECTION 2. It being immediately necessary for the preservation
4 of the public peace, health or safety, an emergency is hereby
5 declared to exist, by reason whereof this act shall take effect and
6 be in full force from and after its passage and approval.

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