

STATE OF OKLAHOMA

2nd Session of the 56th Legislature (2018)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL NO. 1249

By: Leewright of the Senate

and

Mulready of the House

COMMITTEE SUBSTITUTE

An Act relating to workers' compensation; amending Section 36, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2017, Section 36), which relates to liability other than immediate employer; modifying certain liability; providing for Affidavit of Exempt Status; providing for form; requiring form to be on Workers' Compensation Commission website; authorizing fee for execution of affidavit; authorizing renewal of affidavit; establishing penalty for providing false information on an affidavit; requiring cancellation of affidavit under certain circumstances; requiring Commission to provide notice of violations to the Attorney General Workers' Compensation Fraud Unit; stating effect of execution of affidavit on certain employees; directing deposit of certain fees; providing exception for liability; updating statutory references; 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. 2017, Section 36), is amended to read as follows:

1 Section 36. A. If a subcontractor fails to secure compensation
2 required by ~~this act~~ the Administrative Workers' Compensation Act,
3 the prime contractor shall be liable for compensation to the
4 employees of the subcontractor unless there is an intermediate
5 subcontractor who has workers' compensation coverage.

6 B. 1. Any contractor or the contractor's insurance carrier who
7 shall become liable for the payment of compensation on account of
8 injury to or death of an employee of his or her subcontractor may
9 recover from the subcontractor the amount of the compensation paid
10 or for which liability is incurred.

11 2. The claim for the recovery shall constitute a lien against
12 any monies due or to become due to the subcontractor from the prime
13 contractor.

14 3. A claim for recovery shall not affect the right of the
15 injured employee or the dependents of the deceased employee to
16 recover compensation due from the prime contractor or his or her
17 insurance carrier.

18 C. 1. a. ~~When a sole proprietorship or partnership fails to~~
19 ~~elect to cover the sole proprietor or partners under~~
20 ~~this act~~ a subcontractor elects not to secure
21 compensation and is not required to secure
22 compensation pursuant to this title, the prime
23 contractor is not liable under ~~this act~~ the
24 Administrative Workers' Compensation Act for injuries

1 sustained by the ~~sole proprietor or partners~~
2 subcontractor or any person working with the
3 subcontractor who is not considered an employee of the
4 subcontractor pursuant to Section 2 of this title, and
5 if the ~~sole proprietor or partners are~~ injured person
6 is not employees an employee of the prime contractor.

- 7 b. (1) ~~A sole proprietor or the partners of a~~
8 ~~partnership who do not elect to be covered by~~
9 ~~this act and be deemed employees thereunder and~~
10 ~~who deliver to the prime contractor a current~~
11 ~~certification of noncoverage issued by the~~
12 ~~Commission~~ If a subcontractor has filed with the
13 Commission an unexpired Affidavit of Exempt
14 Status, the subcontractor and any person who
15 works with the subcontractor but is not
16 considered an employee of the subcontractor
17 pursuant to Section 2 of this title shall be
18 conclusively presumed not to be covered by the
19 law or to be employees of the prime contractor
20 during the term of ~~his or her certification or~~
21 ~~any renewals thereof~~ the affidavit.
- 22 (2) ~~A certificate of noncoverage may not be presented~~
23 ~~to a subcontractor who does not have workers'~~
24 ~~compensation coverage.~~

1 ~~(3)~~ This provision shall not affect the rights or
2 coverage of any ~~employees of the sole proprietor~~
3 ~~or of the partnership~~ employee of a
4 subcontractor.

5 2. The prime contractor's insurance carrier shall not be liable
6 for injuries to the ~~sole proprietor or partners~~ subcontractor
7 described in this section who have ~~provided a current certification~~
8 ~~of noncoverage~~ filed an unexpired Affidavit of Exempt Status, and
9 the carrier shall not include compensation paid by the prime
10 contractor to the ~~sole proprietor or partners~~ subcontractor
11 described above in computing the insurance premium for the prime
12 contractor.

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

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

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

4 D. 1. ~~A certification of noncoverage issued by the Commission~~
5 ~~shall be valid for two (2) years after the effective date stated~~
6 ~~thereon. Both the effective date and the expiration date shall be~~
7 ~~listed on the face of the certificate by the Commission. The~~
8 ~~certificate~~ Any individual or business entity that is not required
9 to secure compensation pursuant to the requirements of the
10 Administrative Workers' Compensation Act may execute an Affidavit of
11 Exempt Status. The "Affidavit of Exempt Status" shall be a form
12 prescribed by the Workers' Compensation Commission available on the
13 Commission's website. The Commission may assess a nonrefundable fee
14 not to exceed Fifty Dollars (\$50.00) per individual or business
15 entity for filing of an Affidavit of Exempt Status at the
16 Commission. An Affidavit of Exempt Status executed and filed with
17 the Commission shall expire at midnight two (2) years from its issue
18 date, as noted on the face of the certificate the date filed. A new
19 Affidavit of Exempt Status may be filed prior to expiration to renew
20 an existing Affidavit of Exempt Status.

21 ~~2. The Commission may assess a fee not to exceed Fifty Dollars~~
22 ~~(\$50.00) with each application for a certification of noncoverage or~~
23 ~~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 a. Knowingly providing false information on an executed
8 affidavit shall constitute a misdemeanor punishable by
9 a fine not to exceed One Thousand Dollars (\$1,000.00).

10 b. In the event changed circumstances make securing
11 compensation pursuant to the requirements of the
12 Administrative Workers' Compensation Act necessary,
13 the individual or business entity on whose behalf the
14 affidavit was executed shall execute and file a
15 Cancellation of Affidavit of Exempt Status. The
16 Commission shall prescribe a form for cancellation of
17 an affidavit which shall available on the Commission's
18 website.

19 c. Affidavits shall conspicuously state on the front
20 thereof in at least ten-point, bold-faced print that
21 it is a crime to falsify information on the form.

22 d. The Commission shall immediately notify the Workers'
23 Compensation Fraud Unit in the Office of the Attorney
24 General of any violations or suspected violations of

1 this section. The Commission shall cooperate with the
2 Fraud Unit in any investigation involving affidavits
3 executed pursuant to this section.

4 The execution or filing of an affidavit shall not affect the
5 rights or coverage of any employee of the affiant or business entity
6 on whose behalf the affiant executes or files an affidavit.

7 3. Fees collected pursuant to this section shall be deposited
8 in the State Treasury to the credit of the Workers' Compensation
9 Commission Revolving Fund.

10 E. If work is performed by an independent contractor on a
11 single-family residential dwelling occupied by the owner, or the
12 premises of such dwelling, or for a farmer whose cash payroll for
13 wages, excluding supplies, materials and equipment, for the
14 preceding calendar year did not exceed One Hundred Thousand Dollars
15 (\$100,000.00), such owner or farmer shall not be liable for
16 compensation under ~~this act~~ the Administrative Workers' Compensation
17 Act for injuries to the independent contractor or his or her
18 employees.

19 F. If an owner of a project or job enters a contract with a
20 contractor, and the owner of the project or job does not
21 substantively form an employment relationship with its contractor,
22 then the owner of the project or job shall not be liable for
23 compensation for a compensable injury to any contractor or
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1 subcontractor in any tier or employee of any contractor or
2 subcontractor in any tier.

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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8 56-2-10273 GRS 03/28/18

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