

1 ENGROSSED SENATE
2 BILL NO. 1249

By: Leewright of the Senate

3 and

4 Mulready of the House

5
6 [workers' compensation - liability - Affidavit of
7 Exempt Status - website - fee - penalty - notice of
8 violations - exception - effective date]
9

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

11 SECTION 1. AMENDATORY Section 36, Chapter 208, O.S.L.
12 2013 (85A O.S. Supp. 2017, Section 36), is amended to read as
13 follows:

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

19 B. 1. Any contractor or the contractor's insurance carrier who
20 shall become liable for the payment of compensation on account of
21 injury to or death of an employee of his or her subcontractor may
22 recover from the subcontractor the amount of the compensation paid
23 or for which liability is incurred.
24

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

4 3. A claim for recovery shall not affect the right of the
5 injured employee or the dependents of the deceased employee to
6 recover compensation due from the prime contractor or his or her
7 insurance carrier.

8 C. 1. a. ~~When a sole proprietorship or partnership fails to~~
9 ~~elect to cover the sole proprietor or partners under~~
10 this act a subcontractor elects not to secure
11 compensation and is not required to secure
12 compensation pursuant to this title, the prime
13 contractor is not liable under ~~this act~~ the
14 Administrative Workers' Compensation Act for injuries
15 sustained by the ~~sole proprietor or partners~~
16 subcontractor or any person working with the
17 subcontractor who is not considered an employee of the
18 subcontractor pursuant to Section 2 of this title, and
19 if the ~~sole proprietor or partners are~~ injured person
20 is not employees an employee of the prime contractor.

21 b. (1) ~~A sole proprietor or the partners of a~~
22 ~~partnership who do not elect to be covered by~~
23 ~~this act and be deemed employees thereunder and~~
24 ~~who deliver to the prime contractor a current~~

1 ~~certification of noncoverage issued by the~~
2 ~~Commission~~ If a subcontractor has filed with the
3 Commission an unexpired Affidavit of Exempt
4 Status, the subcontractor and any person who
5 works with the subcontractor but is not
6 considered an employee of the subcontractor
7 pursuant to Section 2 of this title shall be
8 conclusively presumed not to be covered by the
9 law or to be employees of the prime contractor
10 during the term of ~~his or her certification or~~
11 ~~any renewals thereof~~ the affidavit.

12 (2) ~~A certificate of noncoverage may not be presented~~
13 ~~to a subcontractor who does not have workers'~~
14 ~~compensation coverage.~~

15 ~~(3)~~ This provision shall not affect the rights or
16 coverage of any ~~employees of the sole proprietor~~
17 ~~or of the partnership~~ employee of a
18 subcontractor.

19 2. The prime contractor's insurance carrier shall not be liable
20 for injuries to the ~~sole proprietor or partners~~ subcontractor
21 described in this section who have ~~provided a current certification~~
22 ~~of noncoverage~~ filed an unexpired Affidavit of Exempt Status, and
23 the carrier shall not include compensation paid by the prime
24 contractor to the ~~sole proprietor or partners~~ subcontractor

1 described above in computing the insurance premium for the prime
2 contractor.

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

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

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

16 D. 1. ~~A certification of noncoverage issued by the Commission~~
17 ~~shall be valid for two (2) years after the effective date stated~~
18 ~~thereon. Both the effective date and the expiration date shall be~~
19 ~~listed on the face of the certificate by the Commission. The~~
20 ~~certificate~~ Any individual or business entity that is not required
21 to secure compensation pursuant to the requirements of the
22 Administrative Workers' Compensation Act may execute an Affidavit of
23 Exempt Status. The "Affidavit of Exempt Status" shall be a form
24 prescribed by the Workers' Compensation Commission available on the

1 Commission's website. The Commission may assess a non-refundable
2 fee not to exceed Fifty Dollars (\$50.00) per individual or business
3 entity for filing of an Affidavit of Exempt Status at the
4 Commission. An Affidavit of Exempt Status executed and filed with
5 the Commission shall expire at midnight two (2) years from its issue
6 date, as noted on the face of the certificate the date filed. A new
7 Affidavit of Exempt Status may be filed prior to expiration to renew
8 an existing Affidavit of Exempt Status.

9 ~~2. The Commission may assess a fee not to exceed Fifty Dollars~~
10 ~~(\$50.00) with each application for a certification of noncoverage or~~
11 ~~any renewals thereof.~~

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

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

18 a. Knowingly providing false information on an executed
19 affidavit shall constitute a misdemeanor punishable by
20 a fine not to exceed One Thousand Dollars (\$1,000.00).

21 b. In the event changed circumstances make securing
22 compensation pursuant to the requirements of the
23 Administrative Workers' Compensation Act necessary,
24 the individual or business entity on whose behalf the

1 affidavit was executed shall execute and file a
2 Cancellation of Affidavit of Exempt Status. The
3 Commission shall prescribe a form for cancellation of
4 an affidavit which shall available on the Commission's
5 website.

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

9 d. The commission shall immediately notify the Workers'
10 Compensation Fraud Unit in the Office of the Attorney
11 General of any violations or suspected violations of
12 this section. The Commission shall cooperate with the
13 Fraud Unit in any investigation involving affidavits
14 executed pursuant to this section.

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

18 3. Fees collected pursuant to this section shall be deposited
19 in the State Treasury to the credit of the Workers Compensation
20 Commission Revolving Fund.

21 E. If work is performed by an independent contractor on a
22 single-family residential dwelling occupied by the owner, or the
23 premises of such dwelling, or for a farmer whose cash payroll for
24 wages, excluding supplies, materials and equipment, for the

1 preceding calendar year did not exceed One Hundred Thousand Dollars
2 (\$100,000.00), such owner or farmer shall not be liable for
3 compensation under ~~this act~~ the Administrative Workers' Compensation
4 Act for injuries to the independent contractor or his or her
5 employees.

6 F. If an owner of a project or job enters a contract with a
7 contractor, and the owner of the project or job does not
8 substantively form an employment relationship with its contractor,
9 then the owner of the project or job shall not be liable for
10 compensation for a compensable injury to any contractor or
11 subcontractor in any tier or employee of any contractor or
12 subcontractor in any tier.

13 SECTION 2. This act shall become effective November 1, 2018.

14 Passed the Senate the 15th day of March, 2018.

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16 _____
17 Presiding Officer of the Senate

18 Passed the House of Representatives the ____ day of _____,
19 2018.

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21 _____
22 Presiding Officer of the House
23 of Representatives
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