

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 56th Legislature (2018)

4 COMMITTEE SUBSTITUTE
5 FOR ENGROSSED
6 SENATE BILL NO. 1249

By: Leewright of the Senate

and

Mulready of the House

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10 COMMITTEE SUBSTITUTE

11 An Act relating to workers' compensation; amending
12 Section 36, Chapter 208, O.S.L. 2013 (85A O.S. Supp.
13 2017, Section 36), which relates to liability other
14 than immediate employer; modifying certain liability;
15 providing for Affidavit of Exempt Status; providing
16 for form; requiring form to be on Workers'
17 Compensation Commission website; authorizing fee for
18 execution of affidavit; authorizing renewal of
19 affidavit; establishing penalty for providing false
20 information on an affidavit; requiring cancellation
21 of affidavit under certain circumstances; requiring
22 Commission to provide notice of violations to the
23 Attorney General Workers' Compensation Fraud Unit;
24 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:

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

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

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

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

C. 1. a. ~~When a sole proprietorship or partnership fails to
elect to cover the sole proprietor or partners under
this act~~ a subcontractor elects not to secure
compensation and is not required to secure

1 compensation pursuant to this title, the prime
2 contractor is not liable under ~~this act~~ the
3 Administrative Workers' Compensation Act for injuries
4 sustained by the ~~sole proprietor or partners~~
5 subcontractor or any person working with the
6 subcontractor who is not considered an employee of the
7 subcontractor pursuant to Section 2 of this title, and
8 if the ~~sole proprietor or partners are~~ injured person
9 is not employees an employee of the prime contractor.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 d. The Commission shall immediately notify the Workers'
2 Compensation Fraud Unit in the Office of the Attorney
3 General of any violations or suspected violations of
4 this section. The Commission shall cooperate with the
5 Fraud Unit in any investigation involving affidavits
6 executed pursuant to this section.

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

10 3. Fees collected pursuant to this section shall be deposited
11 in the State Treasury to the credit of the Workers' Compensation
12 Commission Revolving Fund.

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

22 F. If an owner of a project or job enters a contract with a
23 contractor, and the owner of the project or job does not
24 substantively form an employment relationship with its contractor,

1 then the owner of the project or job shall not be liable for
2 compensation for a compensable injury to any contractor or
3 subcontractor in any tier or employee of any contractor or
4 subcontractor in any tier.

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

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10 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 03/28/2018 - DO
11 PASS, As Amended.

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