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February 20, 2018

**AS AMENDED**

SENATE BILL NO. 1249

By: Dahm of the Senate

and

Mulready of the House

[ workers' compensation - liability - Affidavit of  
Exempt Status - website - fee - penalty - notice of  
violations - exception - effective date ]

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

1 recover from the subcontractor the amount of the compensation paid  
2 or for which liability is incurred.

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

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

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

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

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

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

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

1 the carrier shall not include compensation paid by the prime  
2 contractor to the ~~sole proprietor or partners~~ subcontractor  
3 described above in computing the insurance premium for the prime  
4 contractor.

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

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

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

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

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

11 ~~2. The Commission may assess a fee not to exceed Fifty Dollars~~  
12 ~~(\$50.00) with each application for a certification of noncoverage or~~  
13 ~~any renewals thereof.~~

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

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

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

23 b. In the event changed circumstances make securing  
24 compensation pursuant to the requirements of the

1           Administrative Workers' Compensation Act necessary,  
2           the individual or business entity on whose behalf the  
3           affidavit was executed shall execute and file a  
4           Cancellation of Affidavit of Exempt Status. The  
5           Commission shall prescribe a form for cancellation of  
6           an affidavit which shall available on the Commission's  
7           website.

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

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

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

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

23           E. If work is performed by an independent contractor on a  
24           single-family residential dwelling occupied by the owner, or the

1 premises of such dwelling, or for a farmer whose cash payroll for  
2 wages, excluding supplies, materials and equipment, for the  
3 preceding calendar year did not exceed One Hundred Thousand Dollars  
4 (\$100,000.00), such owner or farmer shall not be liable for  
5 compensation under ~~this act~~ the Administrative Workers' Compensation  
6 Act for injuries to the independent contractor or his or her  
7 employees.

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

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

16 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY  
17 February 20, 2018 - DO PASS AS AMENDED  
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