

1 STATE OF OKLAHOMA

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

3 SENATE BILL 1249

By: Dahm

6 AS INTRODUCED

7 An Act relating to workers' compensation; amending
8 Section 36, Chapter 208, O.S.L. 2013 (85A O.S. Supp.
9 2017, Section 36), which relates to liability other
10 than immediate employer; modifying certain liability;
11 providing for Affidavit of Exempt Status; providing
12 for form; requiring form to be on Worker'
13 Compensation Commission website; authorizing fee for
14 execution of Affidavit; authorizing renewal of
15 Affidavit; establishing penalty for providing false
16 information on an Affidavit; requiring cancellation
17 of Affidavit under certain circumstances; requiring
18 Commission to provide notice of violations to the
19 Attorney General Workers' Compensation Fraud Unit;
20 stating effect of execution of Affidavit on certain
21 employees; directing deposit of certain fees;
22 providing exception for liability; updating statutory
23 references; and providing an effective date.

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

19 SECTION 1. AMENDATORY Section 36, Chapter 208, O.S.L.
20 2013 (85A O.S. Supp. 2017, Section 36), is amended to read as
21 follows:

22 Section 36. A. If a subcontractor fails to secure compensation
23 required by ~~this act~~ the Administrative Workers' Compensation Act,
24 the prime contractor shall be liable for compensation to the

1 employees of the subcontractor unless there is an intermediate
2 subcontractor who has workers' compensation coverage.

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

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

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

15 C. 1. a. ~~When a sole proprietorship or partnership fails to~~
16 ~~elect to cover the sole proprietor or partners under~~
17 ~~this act~~ a subcontractor elects not to secure
18 compensation and is not required to secure
19 compensation pursuant to this title, the prime
20 contractor is not liable under ~~this act~~ the
21 Administrative Workers' Compensation Act for injuries
22 sustained by the ~~sole proprietor or partners~~
23 subcontractor or any person working with the
24 subcontractor who is not considered an employee of the

1 subcontractor pursuant to Section 2 of this title, and
2 if the sole proprietor or partners are injured person
3 is not employees an employee of the prime contractor.

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

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

22 ~~(3)~~ This provision shall not affect the rights or
23 coverage of any ~~employees of the sole proprietor~~

~~or of the partnership~~ employee of a
subcontractor.

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

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

18 2. ~~The Commission may assess a fee not to exceed Fifty Dollars~~
19 ~~(\$50.00) with each application for a certification of noncoverage or~~
20 ~~any renewals thereof.~~

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

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

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

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

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

18 d. The commission shall immediately notify the Workers'
19 Compensation Fraud Unit in the Office of the Attorney
20 General of any violations or suspected violations of
21 this section. The Commission shall cooperate with the
22 Fraud Unit in any investigation involving affidavits
23 executed pursuant to this section.

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

4 3. Fees collected pursuant to this section shall be deposited
5 in the State Treasury to the credit of the Workers Compensation
6 Commission Revolving Fund.

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~~ the Administrative Workers' Compensation
14 Act for injuries to the independent contractor or his or her
15 employees.

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

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

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