

<DateSubmitted>

HOUSE OF REPRESENTATIVES
CONFERENCE COMMITTEE REPORT

Mr. President:
Mr. Speaker:

The Conference Committee, to which was referred

HB2242

By: Mulready of the House and Sykes of the Senate

Title: Workers' compensation; providing for Affidavit of Exempt Status.

Together with Engrossed Senate Amendments thereto, beg leave to report that we have had the same under consideration and herewith return the same with the following recommendations:

1. That the Senate recede from its amendment; and
2. That the attached Conference Committee Substitute be adopted.

Respectfully submitted,

House Action _____ Date _____ Senate Action _____ Date _____

SENATE CONFEREES

Sykes	_____
Dahm	_____
Daniels	_____
Standridge	_____
Smalley	_____
Sparks	_____
Floyd	_____

STATE OF OKLAHOMA

1st Session of the 56th Legislature (2017)

CONFERENCE COMMITTEE
SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 2242

By: Mulready of the House

and

Sykes of the Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to workers' compensation; amending Section 36, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2016, Section 36), which relates to liability other than liability of immediate employer; modifying scope of nonliability of prime contractors; providing for Affidavit of Exempt Status; providing for form; requiring form to be on website of the Workers' Compensation Commission; providing who is eligible to execute Affidavit; authorizing fee for execution of Affidavit; providing that providing false information constitutes a misdemeanor and providing fine therefor; providing for Cancellation of Affidavit of Exempt Status; providing for form; requiring form to be on website of the Workers' Compensation Commission; requiring the Workers' Compensation Commission to provide notice of violations to the Workers' Compensation Fraud Unit; providing for remittance of fees; providing that certain owners of projects or jobs are not liable for compensation for a compensable injury; 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. 2016, Section 36), is amended to read as follows:

Section 36. A. If a subcontractor fails to secure compensation required by this 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~~ the 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 for injuries
3 sustained by the ~~sole proprietor or partners if the~~
4 ~~sole proprietor or partners are not employees~~
5 subcontractor or any person working with the
6 subcontractor who is not considered an employee of the
7 subcontractor pursuant to paragraph 18 of Section 2 of
8 this title and if the injured person is not an
9 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 Workers' Compensation Commission an unexpired
17 Affidavit of Exempt Status, the subcontractor and
18 any person who works with a subcontractor but is
19 not considered an employee of the subcontractor
20 pursuant to paragraph 18 of Section 2 of this
21 title shall be conclusively presumed not to be
22 covered by the law or to be employees of the
23 prime contractor during the term of ~~his or her~~

~~certification or any renewals thereof~~ the
Affidavit.

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

~~(3)~~ This provision shall not affect the rights or
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~~ has 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 this section 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.~~

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

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

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

- 1 2. a. Knowingly providing false information on an executed
2 Affidavit of Exempt Status shall constitute a
3 misdemeanor punishable by a fine not to exceed One
4 Thousand Dollars (\$1,000.00).
- 5 b. In the event changed circumstances make securing
6 compensation pursuant to the requirements of the
7 Administrative Workers' Compensation Act necessary,
8 the individual or business entity on whose behalf the
9 Affidavit of Exempt Status was executed shall execute
10 and file a Cancellation of Affidavit of Exempt Status.
11 The Commission shall prescribe a form for cancellation
12 of an Affidavit of Exempt Status which shall be
13 available on the Commission's website.
- 14 c. The Affidavit of Exempt Status shall conspicuously
15 state on the front thereof in at least ten-point,
16 bold-faced print that it is a crime to falsify
17 information on the form.
- 18 d. The Commission ~~may assess a fee not to exceed Fifty~~
19 ~~Dollars (\$50.00) with each application for a~~
20 ~~certification of noncoverage or any renewals thereof~~
21 shall immediately notify the Workers' Compensation
22 Fraud Unit in the Office of the Attorney General of
23 any violations or suspected violations of this
24 section. The Commission shall cooperate with the

1 Fraud Unit in any investigation involving affidavits
2 executed pursuant to this section.

3 3. ~~Any certification of noncoverage issued by the Commission~~
4 ~~shall contain the social security number and notarized signature of~~
5 ~~the applicant. The notarization shall be in a form and manner~~
6 ~~prescribed by the Commission~~ The execution or filing of an Affidavit
7 of Exempt Status shall not affect the rights or coverage of any
8 employee of the affiant or business entity on whose behalf the
9 affiant executes or files an Affidavit.

10 4. ~~The Commission may prescribe by rule forms and procedures~~
11 ~~for issuing or renewing a certification of noncoverage~~ Fees
12 collected pursuant to this section shall be deposited in the State
13 Treasury to the credit of the Workers Compensation Commission
14 Revolving Fund.

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

23 F. If any owner of a project or job enters a contract with a
24 contractor, and the owner of the project or job does not

1 substantively form an employment relationship with its contractor,
2 then the owner of the project or job shall not be liable for
3 compensation for a compensable injury to any contractor or
4 subcontractor in any tier or employee of any contractor or
5 subcontractor in any tier.

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

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11 56-1-8038 SD 05/18/17

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