

1 ENGROSSED SENATE AMENDMENT
TO
2 ENGROSSED HOUSE
BILL NO. 2242

By: Mulready of the House

and

Sykes of the Senate

7 An Act relating to workers' compensation; amending
8 Section 36, Chapter 208, O.S.L. 2013 (85A O.S. Supp.
9 2016, Section 36), which relates to liability other
10 than that of immediate employer; modifying parties
11 that are liable; providing for Affidavit of Exempt
12 Status; providing for form; requiring form to be on
13 website of the Workers' Compensation Commission;
14 providing who is eligible to execute Affidavit;
15 authorizing fee for execution of Affidavit;
16 establishing rebuttable presumption; retaining rights
17 and coverage for employees; providing penalty for
18 providing false information of an Affidavit;
19 requiring the Workers' Compensation Commission to
20 provide notice of violations to the Workers'
21 Compensation Fraud Unit; providing for remittance of
22 fees; and providing immunity for liability for good-
23 faith reliance on certain proof.

18 AMENDMENT NO. 1. Page 1, strike the title to read

19 " [workers' compensation - liability other than that
20 of immediate employer - Affidavit of Exempt Status -
21 fees] "

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20 provide notice of violations to the Workers'
21 Compensation Fraud Unit; providing for remittance of
22 fees; and providing immunity for liability for good-
23 faith reliance on certain proof.

24 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~~ an individual or business
entity fails to secure compensation required by this ~~act~~ title, the
~~prime contractor~~ party for whom work is being performed shall be

1 liable for compensation to the employees of the ~~subcontractor~~
2 individual or business entity unless there is an intermediate
3 ~~subcontractor~~ individual or business entity who has workers'
4 compensation coverage.

5 B. 1. Any ~~contractor or the contractor's~~ party for whom work
6 is being performed or the party's insurance carrier who shall become
7 liable for the payment of compensation on account of injury to or
8 death of an employee of ~~his or her subcontractor~~ an individual or
9 business entity may recover from the ~~subcontractor~~ individual or
10 business entity the amount of the compensation paid or for which
11 liability is incurred.

12 2. The claim for the recovery shall constitute a lien against
13 any monies due or to become due to the ~~subcontractor~~ individual or
14 business entity from the ~~prime contractor~~ party for whom work is
15 being performed.

16 3. A claim for recovery shall not affect the right of the
17 injured employee or the dependents of the deceased employee to
18 recover compensation due from the ~~prime contractor~~ party for whom
19 work is being performed or his or her insurance carrier.

20 C. 1. a. ~~When a sole proprietorship or partnership fails to~~
21 ~~elect to cover the sole proprietor or partners under~~
22 ~~this act, the prime contractor is not liable under~~
23 ~~this act for injuries sustained by the sole proprietor~~
24

1 ~~or partners if the sole proprietor or partners are not~~
2 ~~employees of the prime contractor.~~

3 b. ~~(1) A sole proprietor or the partners of a~~
4 ~~partnership who do not elect to be covered by~~
5 ~~this act and be deemed employees thereunder and~~
6 ~~who deliver to the prime contractor a current~~
7 ~~certification of noncoverage issued by the~~
8 ~~Commission shall be conclusively presumed not to~~
9 ~~be covered by the law or to be employees of the~~
10 ~~prime contractor during the term of his or her~~
11 ~~certification or any renewals thereof.~~

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.~~

18 ~~2. The prime contractor's insurance carrier shall not be liable~~
19 ~~for injuries to the sole proprietor or partners described in this~~
20 ~~section who have provided a current certification of noncoverage,~~
21 ~~and the carrier shall not include compensation paid by the prime~~
22 ~~contractor to the sole proprietor or partners described above in~~
23 ~~computing the insurance premium for the prime contractor.~~

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

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

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

14 D. 1. ~~A certification of noncoverage issued by the Commission~~
15 ~~shall be valid for two (2) years after the effective date stated~~
16 ~~thereon. Both the effective date and the expiration date shall be~~
17 ~~listed on the face of the certificate by the Commission. The~~
18 ~~certificate shall expire at midnight two (2) years from its issue~~
19 ~~date, as noted on the face of the certificate.~~

20 2. ~~The Commission may assess a fee not to exceed Fifty Dollars~~
21 ~~(\$50.00) with each application for a certification of noncoverage or~~
22 ~~any renewals thereof.~~

23 3. ~~Any certification of noncoverage issued by the Commission~~
24 ~~shall contain the social security number and notarized signature of~~

1 ~~the applicant. The notarization shall be in a form and manner~~
2 ~~prescribed by the Commission.~~

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

5 ~~E. If work is performed by an independent contractor on a~~
6 ~~single-family residential dwelling occupied by the owner, or the~~
7 ~~premises of such dwelling, or for a farmer whose cash payroll for~~
8 ~~wages, excluding supplies, materials and equipment, for the~~
9 ~~preceding calendar year did not exceed One Hundred Thousand Dollars~~
10 ~~(\$100,000.00), such owner or farmer shall not be liable for~~
11 ~~compensation under this act for injuries to the independent~~
12 ~~contractor or his or her employees~~ Any individual or business entity
13 that is not required to be covered under a workers' compensation
14 insurance policy or other plan for the payment of workers'
15 compensation may execute an Affidavit of Exempt Status under the
16 Administrative Workers' Compensation Act. The Affidavit shall be a
17 form prescribed by the Workers' Compensation Commission and shall be
18 available on the Commission's website. The Commission may assess a
19 fee not to exceed Fifty Dollars (\$50.00) for each Affidavit
20 executed.

21 D. Execution of the Affidavit shall establish a rebuttable
22 presumption that the executor or executor's agent is not an employee
23 for purposes of the Administrative Workers' Compensation Act and
24 that an individual or company possessing the Affidavit is in

1 compliance and shall not be responsible for workers' compensation
2 claims made by the executor.

3 E. The execution of an Affidavit shall not affect the rights or
4 coverage of any employee of the individual executing the Affidavit.

5 F. 1. Knowingly providing false information on a notarized
6 Affidavit of Exempt Status under the Administrative Workers'
7 Compensation Act shall constitute a misdemeanor punishable by a fine
8 not to exceed One Thousand Dollars (\$1,000.00).

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

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

17 G. Fees collected pursuant to subsection C of this section
18 shall be deposited in the State Treasury to the credit of the
19 Workers' Compensation Commission Revolving Fund.

20 H. If any employer relies in good faith on proof of a valid
21 workers' compensation insurance policy issued to a contractor of any
22 tier or on proof of an Affidavit of Exempt Status under this
23 section, the employer shall not be liable for injuries of any
24 employees of the contractor.

1 Passed the House of Representatives the 20th day of March, 2017.

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4 Presiding Officer of the House
of Representatives

5 Passed the Senate the ____ day of _____, 2017.

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9 Presiding Officer of the Senate