

1 **SENATE FLOOR VERSION**

2 April 11, 2017

3 **AS AMENDED**

4 ENGROSSED HOUSE

5 BILL NO. 2242

6 By: Mulready of the House

7 and

8 Sykes of the Senate

9 **[workers' compensation - liability other than that
10 of immediate employer - Affidavit of Exempt Status -
11 fees]**

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

13 SECTION 1. AMENDATORY Section 36, Chapter 208, O.S.L.
14 2013 (85A O.S. Supp. 2016, Section 36), is amended to read as
15 follows:

16 Section 36. A. If ~~a subcontractor~~ an individual or business
17 entity fails to secure compensation required by this ~~act~~ title, the
18 ~~prime contractor~~ party for whom work is being performed shall be
19 liable for compensation to the employees of the ~~subcontractor~~
20 individual or business entity unless there is an intermediate
21 ~~subcontractor~~ individual or business entity who has workers'
22 compensation coverage.

23 B. 1. Any ~~contractor or the contractor's~~ party for whom work
24 is being performed or the party's insurance carrier who shall become

1 liable for the payment of compensation on account of injury to or
2 death of an employee of ~~his or her subcontractor~~ an individual or
3 business entity may recover from the ~~subcontractor~~ individual or
4 business entity the amount of the compensation paid or for which
5 liability is incurred.

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

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

14 C. ~~1. a. When a sole proprietorship or partnership fails to~~
15 ~~elect to cover the sole proprietor or partners under~~
16 ~~this act, the prime contractor is not liable under~~
17 ~~this act for injuries sustained by the sole proprietor~~
18 ~~or partners if the sole proprietor or partners are not~~
19 ~~employees of the prime contractor.~~

20 b. ~~(1) A sole proprietor or the partners of a~~
21 ~~partnership who do not elect to be covered by~~
22 ~~this act and be deemed employees thereunder and~~
23 ~~who deliver to the prime contractor a current~~
24 ~~certification of noncoverage issued by the~~

1 ~~Commission shall be conclusively presumed not to~~
2 ~~be covered by the law or to be employees of the~~
3 ~~prime contractor during the term of his or her~~
4 ~~certification or any renewals thereof.~~

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

8 ~~(3) This provision shall not affect the rights or~~
9 ~~coverage of any employees of the sole proprietor~~
10 ~~or of the partnership.~~

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

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

23 ~~b. Any prime contractor who compels a sole proprietor or~~
24 ~~partnership to obtain a certification of noncoverage~~

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 shall expire at midnight two (2) years from its issue~~
11 ~~date, as noted on the face of the certificate.~~

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

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

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

21 ~~E. If work is performed by an independent contractor on a~~
22 ~~single-family residential dwelling occupied by the owner, or the~~
23 ~~premises of such dwelling, or for a farmer whose cash payroll for~~
24 ~~wages, excluding supplies, materials and equipment, for the~~

1 ~~preceding calendar year did not exceed One Hundred Thousand Dollars~~
2 ~~(\$100,000.00), such owner or farmer shall not be liable for~~
3 ~~compensation under this act for injuries to the independent~~
4 ~~contractor or his or her employees~~ Any individual or business entity
5 that is not required to be covered under a workers' compensation
6 insurance policy or other plan for the payment of workers'
7 compensation may execute an Affidavit of Exempt Status under the
8 Administrative Workers' Compensation Act. The Affidavit shall be a
9 form prescribed by the Workers' Compensation Commission and shall be
10 available on the Commission's website. The Commission may assess a
11 fee not to exceed Fifty Dollars (\$50.00) for each Affidavit
12 executed.

13 D. Execution of the Affidavit shall establish a rebuttable
14 presumption that the executor or executor's agent is not an employee
15 for purposes of the Administrative Workers' Compensation Act and
16 that an individual or company possessing the Affidavit is in
17 compliance and shall not be responsible for workers' compensation
18 claims made by the executor.

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

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

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

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

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

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

17 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY
18 April 11, 2017 - DO PASS AS AMENDED
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