

1 STATE OF OKLAHOMA

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

3 HOUSE BILL 2937

By: Mulready

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5  
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 the  
10 Administrative Workers' Compensation Act; modifying  
11 conditions and requirements relating to liability  
12 other than that of an immediate employer; providing  
13 for Affidavit of Exempt Status; specifying immunity  
14 of contractor and prime contractor's insurance  
15 carrier; providing for filing of Affidavit of Exempt  
16 Status and fee therefor; providing for renewals and  
17 fee therefor; making falsifying information on an  
18 executed Affidavit a crime and providing penalty  
19 therefor; providing for cancellation of Affidavit;  
20 requiring the Workers' Compensation Commission to  
21 notify the Workers' Compensation Fraud Unit of  
22 violations or suspected violations; requiring the  
23 Commission to cooperate in investigations; providing  
24 that execution of filing of an Affidavit does not  
affect the rights or coverage of employees; providing  
for deposit of fees in the Workers' Compensation  
Commission Revolving Fund; providing that certain  
owners of projects or jobs are not liable for  
compensation for injuries; 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. 2017, Section 36), is amended to read as  
follows:

1 Section 36. A. If a subcontractor fails to secure compensation  
2 required by ~~this act~~ the Administrative Workers' Compensation Act,  
3 the prime contractor shall be liable for compensation to the  
4 employees of the subcontractor unless there is an intermediate  
5 subcontractor who has workers' compensation coverage.

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

11 2. The claim for the recovery shall constitute a lien against  
12 any monies due or to become due to the subcontractor from the prime  
13 contractor.

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

18 C. 1. a. When ~~a sole proprietorship or partnership fails to~~  
19 ~~elect to cover the sole proprietor or partners under~~  
20 ~~this act~~ the subcontractor elects not to secure  
21 compensation and is not required to secure  
22 compensation pursuant to this title, the prime  
23 contractor is not liable under ~~this act~~ the  
24 Administrative Workers' Compensation Act for injuries

1           sustained by the ~~sole proprietor or partners if the~~  
2           ~~sole proprietor or partners are not employees~~  
3           subcontractor or any person working with the  
4           subcontractor who is not considered an employee of the  
5           subcontractor pursuant to paragraph 18 of Section 2 of  
6           this title and if the injured person is not an  
7           employee of the prime contractor.

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

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

4           ~~(3) This provision shall not affect the rights or~~  
5           ~~coverage of any employees of the sole proprietor~~  
6           ~~or of the partnership employee of the~~  
7           ~~subcontractor.~~

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

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

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

3 ~~2. The Commission may assess a fee not to exceed Fifty Dollars~~  
4 ~~(\$50.00) with each application for a certification of noncoverage or~~  
5 ~~any renewals thereof.~~

6 ~~3. Any certification of noncoverage issued by the Commission~~  
7 ~~shall contain the social security number and notarized signature of~~  
8 ~~the applicant. The notarization shall be in a form and manner~~  
9 ~~prescribed by the Commission.~~

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

12 a. Knowingly providing false information on an executed  
13 Affidavit of Exempt Status shall constitute a  
14 misdemeanor punishable by a fine not to exceed One  
15 Thousand Dollars (\$1,000.00).

16 b. If changed circumstances make securing compensation  
17 pursuant to the requirements of the Administrative  
18 Workers' Compensation Act necessary, the individual or  
19 business entity on whose behalf the Affidavit was  
20 executed shall execute and file a cancellation of  
21 Affidavit of Exempt Status. The Commission shall  
22 prescribe a form for cancellation of an Affidavit  
23 which shall be available on the Commission's website.

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

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

10           3. The execution or filing of an Affidavit shall not affect the  
11           rights or coverage of any employee of the affiant or business entity  
12           on whose behalf the affiant executes or files an Affidavit.

13           4. Fees collected pursuant to this section shall be deposited  
14           in the State Treasury to the credit of the Workers' Compensation  
15           Commission Revolving Fund.

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

1        F. If any owner of a project or job enters into a contract with  
2 a contractor, and the owner of the project or job does not  
3 substantively form an employment relationship with its contractor,  
4 the owner of the project or job shall not be liable for compensation  
5 for a compensable injury to any contractor or subcontractor in any  
6 tier or to any employee of any contractor or subcontractor in any  
7 tier.

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

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13        56-2-8439        SD        01/09/18

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