

1 STATE OF OKLAHOMA

2 1st Session of the 57th Legislature (2019)

3 SENATE BILL 929

By: Leewright

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6 AS INTRODUCED

7 An Act relating to workers' compensation; amending
8 Section 36, Chapter 208, O.S.L. 2013, as amended by
9 Section 1, Chapter 239, O.S.L. 2018 (85A O.S. Supp.
10 2018, Section 36), which relates to Affidavit of
11 Exempt Status; establishing exception to certain
12 presumption; and providing an effective date.

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, as amended by Section 1, Chapter 239, O.S.L. 2018 (85A O.S.
15 Supp. 2018, Section 36), is amended to read as follows:

16 Section 36. A. If a subcontractor fails to secure compensation
17 required by the Administrative Workers' Compensation Act, the prime
18 contractor shall be liable for compensation to the employees of the
19 subcontractor unless there is an intermediate subcontractor who has
20 workers' compensation coverage.

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

3 2. The claim for the recovery shall constitute a lien against
4 any monies due or to become due to the subcontractor from the prime
5 contractor.

6 3. A claim for recovery shall not affect the right of the
7 injured employee or the dependents of the deceased employee to
8 recover compensation due from the prime contractor or his or her
9 insurance carrier.

10 C. 1. a. When a subcontractor elects not to secure compensation
11 and is not required to secure compensation pursuant to
12 this title, the prime contractor is not liable under
13 the Administrative Workers' Compensation Act for
14 injuries sustained by the subcontractor or any person
15 working with the subcontractor who is not considered
16 an employee of the subcontractor pursuant to Section 2
17 of this title, and if the injured person is not an
18 employee of the prime contractor.

19 b. (1) If a subcontractor has filed with the Commission
20 an unexpired Affidavit of Exempt Status, the
21 subcontractor and any person who works with the
22 subcontractor but is not considered an employee
23 of the subcontractor pursuant to Section 2 of
24 this title shall be conclusively presumed not to
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1 be covered by the law or to be employees of the
2 prime contractor during the term of the
3 affidavit, unless the affiant later shows by
4 clear and convincing evidence that he or she is
5 an employee as defined in Section 2 of this
6 title.

7 (2) This provision shall not affect the rights or
8 coverage of any employee of a subcontractor.

9 2. The prime contractor's insurance carrier shall not be liable
10 for injuries to the subcontractor described in this section who have
11 filed an unexpired Affidavit of Exempt Status, and the carrier shall
12 not include compensation paid by the prime contractor to the
13 subcontractor described above in computing the insurance premium for
14 the prime contractor.

15 D. 1. Any individual or business entity that is not required
16 to secure compensation pursuant to the requirements of the
17 Administrative Workers' Compensation Act may execute an Affidavit of
18 Exempt Status. The "Affidavit of Exempt Status" shall be a form
19 prescribed by the Workers' Compensation Commission available on the
20 Commission's website. The Commission may assess a nonrefundable fee
21 not to exceed Fifty Dollars (\$50.00) per individual or business
22 entity for filing of an Affidavit of Exempt Status at the
23 Commission. An Affidavit of Exempt Status executed and filed with
24 the Commission shall expire at midnight two (2) years from the date

1 filed. A new Affidavit of Exempt Status may be filed prior to
2 expiration to renew an existing Affidavit of Exempt Status.

3 2. 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 be available on the
14 Commission's 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 the Administrative Workers' Compensation Act for
14 injuries to the independent contractor or his or her employees.

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

22 SECTION 2. This act shall become effective November 1, 2019.
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