

AN ACT

ENTITLED, An Act to provide for an affidavit creating a rebuttable presumption that a person is not an employee for purposes of workers' compensation and to provide a penalty therefor.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That chapter 62-1 be amended by adding thereto a NEW SECTION to read as follows:

Any independent contractor who is not an employer or a general contractor and is not covered under a workers' compensation insurance policy may sign an affidavit of exempt status under the South Dakota Workers' Compensation Law. Notwithstanding the provisions of § 62-3-10, the affidavit of exempt status creates a rebuttable presumption that the affiant is not an employee for the purposes of the South Dakota Workers' Compensation Act and the person possessing the affidavit is not liable for a workers' compensation claim made by the affiant or any subcontractor of the affiant.

Section 2. That chapter 62-1 be amended by adding thereto a NEW SECTION to read as follows:

The affidavit must be on a form prescribed by the director of the Division of Insurance and must be notarized. The director of the Division of Insurance may promulgate rules pursuant to chapter 1-26 to provide definitions, the form and process for filing the affidavit, and documentation required for filing an affidavit of exemption from the South Dakota Workers' Compensation Law.

The affidavit of exempt status shall contain substantially the following:

- (1) Statements that the affiant:
 - (a) Is not an employee and does not want a workers' compensation insurance policy;
 - (b) Has read, signed, and understands the exempt status fact sheet attachment to the affidavit;
 - (c) Understands that the affiant will be considered an independent contractor and will not be considered an employee under the South Dakota Workers' Compensation

Law;

- (d) Understands that the affiant will not be eligible for compensation under the South Dakota Workers' Compensation Law;
 - (e) Understands that the signing of the affidavit creates a rebuttable presumption that the affiant is not an employee for the purpose of the South Dakota Workers' Compensation Act;
 - (f) Understands that the signing of the affidavit does not affect the rights or coverage of any employee of the affiant;
 - (g) Is not signing the affidavit or providing information as a result of force, threat, coercion, compulsion, or duress; and
 - (h) Understands that knowingly providing false information on an affidavit of exempt status under the South Dakota Workers' Compensation Law is a Class 2 misdemeanor; and
- (2) An exempt status fact sheet, to be attached to the affidavit, which:
- (a) Delineates the legal requirements recognized in law for determining whether a person is an independent contractor; and
 - (b) Contains a statement that the affiant believes they are an independent contractor given the preceding list of legal requirements.

Section 3. That chapter 62-1 be amended by adding thereto a NEW SECTION to read as follows:

Any person who solicits or provides false information on an affidavit of exempt status under the South Dakota Workers' Compensation Law with actual knowledge is guilty of a Class 2 misdemeanor.

Section 4. That chapter 62-1 be amended by adding thereto a NEW SECTION to read as follows:

No employer or general contractor is required to accept an affidavit of exempt status as a

substitute for a certificate of workers' compensation coverage.

An Act to provide for an affidavit creating a rebuttable presumption that a person is not an employee for purposes of workers' compensation and to provide a penalty therefor.

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I certify that the attached Act originated in the

HOUSE as Bill No. 1105

Chief Clerk

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Speaker of the House

Attest:

Chief Clerk

President of the Senate

Attest:

Secretary of the Senate

House Bill No. 1105
File No. _____
Chapter No. _____

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Received at this Executive Office this _____ day of _____ ,

20____ at _____ M.

By _____
for the Governor

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The attached Act is hereby approved this _____ day of _____ , A.D., 20____

Governor

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STATE OF SOUTH DAKOTA,
ss.

Office of the Secretary of State

Filed _____ , 20____
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State