

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

Act 546 of the Regular Session

1 State of Arkansas
2 86th General Assembly
3 Regular Session, 2007
4

As Engrossed: S3/14/07

A Bill

HOUSE BILL 1700

5 By: Representative Dunn
6
7

For An Act To Be Entitled

8
9 AN ACT TO GIVE A *SOLE PROPRIETOR, PARTNER,*
10 PROFESSIONAL ASSOCIATION MEMBER, OR LIMITED
11 LIABILITY COMPANY MEMBER THE SAME RIGHT TO WAIVE
12 WORKERS' COMPENSATION COVERAGE AS A SOLE
13 PROPRIETOR AND A CORPORATE OFFICER; AND FOR OTHER
14 PURPOSES.
15

Subtitle

16
17 TO GIVE A *SOLE PROPRIETOR, PARTNER,*
18 PROFESSIONAL ASSOCIATION MEMBER, OR
19 LIMITED LIABILITY COMPANY MEMBER THE
20 SAME RIGHT TO WAIVE WORKERS'
21 COMPENSATION COVERAGE AS A SOLE
22 PROPRIETOR AND A CORPORATE OFFICER.
23
24

25 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
26

27 SECTION 1. Arkansas Code § 11-9-108 is amended to read as follows:

28 11-9-108. Waiver of compensation void - Exception.

29 (a) No agreement by an employee to waive his or her right to
30 compensation shall be valid, and no contract, regulation, or device
31 whatsoever shall operate to relieve the employer or carrier, in whole or in
32 part, from any liability created by this chapter, except as specifically
33 provided elsewhere in this chapter.

34 (b)(1) However, any officer of a corporation, sole proprietor, partner
35 of a partnership, member of a limited liability company, member of a



1 professional association, or self-employed employer who is not a
 2 subcontractor and who owns and operates his or her own business may by
 3 agreement or contract exclude himself or herself from coverage or waive his
 4 or her right to coverage or compensation under this chapter.

5 (2) If the exclusion from coverage of the officer of a
 6 corporation, sole proprietor, partner of a partnership, member of a limited
 7 liability company member of a professional association, or self-employed
 8 employer reduces the number of employees of the business to ~~less~~ fewer than
 9 three (3), the employer shall nevertheless continue to provide workers'
 10 compensation coverage for the employees.

11
 12 SECTION 2. Arkansas Code § 11-9-102(9), concerning the workers'
 13 compensation definition of "employee", is amended to read as follows:

14 (9)(A) "Employee" means any person, including a minor, whether
 15 lawfully or unlawfully employed in the service of an employer under any
 16 contract of hire or apprenticeship, written or oral, expressed or implied,
 17 but excluding one whose employment is casual and not in the course of the
 18 trade, business, profession, or occupation of his or her employer and
 19 excluding one who is required to perform work for a municipality or county or
 20 the state or federal government upon having been convicted of a criminal
 21 offense or while incarcerated.

22 ~~(B) The term "employee" shall also include a sole~~
 23 ~~proprietor, partner, or member who devotes full time to the proprietorship,~~
 24 ~~partnership, or limited liability company. However, any sole proprietor,~~
 25 ~~partner of a partnership, or member of a limited liability company who~~
 26 ~~desires not to be included in the definition of "employee" may file for and~~
 27 ~~receive a certification of noncoverage under this chapter from the~~
 28 ~~commission.~~

29 ~~(C)(B)~~ The term "employee" shall not include any
 30 individual who is both a licensee as defined in § 17-42-103(10) and a
 31 qualified real estate agent as that term is defined in § 3508(b)(1) of the
 32 Internal Revenue Code of 1986, including all regulations thereunder.

33 ~~(D)(C)~~ Any individual holding from the commission a
 34 current certification of noncoverage under this chapter shall be conclusively
 35 presumed not to be an employee for purposes of this chapter or otherwise
 36 during the term of his or her certification or any renewals thereof or until

1 he or she elects otherwise, whichever time period is shorter.

2 ~~(E) No election by a sole proprietor, partnership, or~~
3 ~~limited liability company under this subdivision (9) shall affect the rights~~
4 ~~or the coverage under this chapter of any employees of those sole~~
5 ~~proprietors, partners, or members.~~

6 ~~(F)(D)~~ Any reference to an employee who has been injured,
7 when that employee is dead, shall also include his or her legal
8 representative, dependents, and other persons to whom compensation may be
9 payable;

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11 /s/ Dunn

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13 APPROVED: 3/28/2007
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