

**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.**

INTERIM STUDY PROPOSAL 2007-150

State of Arkansas  
86th General Assembly  
Regular Session, 2007

**A Bill**

SENATE BILL 916

By: Senator Laverty

Referred to  
Insurance & Commerce - Senate  
by the Arkansas Senate  
on 03/30/2007

**For An Act To Be Entitled**

AN ACT TO REGULATE WORKERS' COMPENSATION; TO  
REQUIRE WORKERS' COMPENSATION COVERAGE OF ALL  
WORKERS; TO AMEND A PORTION OF THE ARKANSAS CODE  
THAT RESULTED FROM INITIATED ACT 4 OF 1948; AND  
FOR OTHER PURPOSES.

**Subtitle**

TO REGULATE WORKERS' COMPENSATION; TO  
REQUIRE WORKERS' COMPENSATION COVERAGE  
OF ALL WORKERS; AND TO AMEND A PORTION  
OF THE ARKANSAS CODE THAT RESULTED FROM  
INITIATED ACT 4 OF 1948.

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

SECTION 1. Arkansas Code § 11-9-102(9), concerning the definition of "employee" and derived from Initiated Act 4 of 1948, is amended to read as follows:

(9)(A) "Employee" means any person, including a minor, whether lawfully or unlawfully employed in the service of an employer under any contract of hire or apprenticeship, written or oral, expressed or implied, but excluding one whose employment is casual and not in the course of the

1 trade, business, profession, or occupation of his or her employer and  
 2 excluding one who is required to perform work for a municipality or county or  
 3 the state or federal government upon having been convicted of a criminal  
 4 offense or while incarcerated.

5 (B) ~~The term "employee" shall also include "Employee"~~  
 6 includes:

7 (i) a sole proprietor, partner of a partnership,  
 8 or member of a limited liability company who devotes full time to the  
 9 proprietorship, partnership, or limited liability company, respectively; and

10 (ii) An independent contractor. ~~However, any sole~~  
 11 ~~proprietor, partner of a partnership, or member of a limited liability~~  
 12 ~~company who desires not to be included in the definition of "employee" may~~  
 13 ~~file for and receive a certification of noncoverage under this chapter from~~  
 14 ~~the commission.~~

15 (C) ~~The term "employee" shall not include "Employee" does~~  
 16 not include any individual who is both a licensee as defined in § 17-42-  
 17 103(10) and a qualified real estate agent as ~~that term is~~ defined in §  
 18 3508(b)(1) of the Internal Revenue Code of 1986, including all regulations  
 19 thereunder.

20 ~~(D) Any individual holding from the commission a current~~  
 21 ~~certification of noncoverage under this chapter shall be conclusively~~  
 22 ~~presumed not to be an employee for purposes of this chapter or otherwise~~  
 23 ~~during the term of his or her certification or any renewals thereof or until~~  
 24 ~~he or she elects otherwise, whichever time period is shorter.~~

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

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

33  
 34 SECTION 2. Arkansas Code § 11-9-102(11), concerning the definition of  
 35 "employment" and derived from Initiated Act 4 of 1948, is amended to read as  
 36 follows:

- 1                   (11) "Employment" means:
- 2                   (A) Every employment in the state in which three (3) or
- 3 more employees are regularly employed by the same employer in the course of
- 4 business except:
- 5                               (i) An employee employed as a domestic servant in or
- 6 about a private home;
- 7                               (ii) An employee employed to do gardening,
- 8 maintenance, repair, remodeling, or similar work in or about the private home
- 9 or residence of the person employing the employee;
- 10                              (iii) Agricultural farm labor;
- 11                              (iv) The State of Arkansas and each of the political
- 12 subdivisions thereof except as provided by §§ 6-17-1401 - 6-17-1405, 14-26-
- 13 101 - 14-26-104, 14-60-101 - 14-60-104, 19-10-101 - 19-10-103, 19-10-202 -
- 14 19-10-210, 19-10-401 - 19-10-406, and 21-5-601 - 21-5-610;
- 15                              (v) A person for whom a rule of liability for injury
- 16 or death arising out of and in the course of employment is provided by the
- 17 laws of the United States;
- 18                              (vi) A person performing services for any nonprofit
- 19 religious, charitable, or relief organization;
- 20                              (vii) Any person engaged in the vending, selling,
- 21 offering for sale, or delivery directly to the general public of any
- 22 newspapers, magazines, or periodicals or any person acting as sales agent or
- 23 distributor as an independent contractor of or for any newspaper, magazine,
- 24 or periodical; and
- 25                              (viii) Any individual who is both a licensee as
- 26 defined in § 17-42-103(10) and a qualified real estate agent as that term is
- 27 defined in § 3508(b)(1) of the Internal Revenue Code of 1986, including all
- 28 regulations thereunder;
- 29                   (B) Every employment in which two (2) or more employees
- 30 are employed by any person engaged in building or building repair work;
- 31                   (C) Every employment in which one (1) or more employees
- 32 are employed by a contractor who subcontracts any part of his or her
- 33 contract; and
- 34                   (D) Every employment in which one (1) or more employees
- 35 are employed by a subcontractor;
- 36

1 SECTION 3. Arkansas Code § 11-9-402, derived from Initiated Act 4 of  
 2 1948, is amended to read as follows:

3 11-9-402. Liability of prime contractors and subcontractors - Sole  
 4 proprietorships or partnerships.

5 (a) ~~Where~~ If a subcontractor fails to secure compensation required by  
 6 this chapter, the prime contractor shall be liable for compensation to the  
 7 employees of the subcontractor unless ~~there is~~ an intermediate subcontractor  
 8 ~~who has~~ provides workers' compensation coverage to the employees of the  
 9 subcontractor.

10 (b)(1) Any contractor or the contractor's insurance carrier who ~~shall~~  
 11 ~~become~~ becomes liable for the payment of compensation on account of injury to  
 12 or death of an employee of his or her subcontractor may recover from the  
 13 subcontractor the amount of the compensation paid or for which liability is  
 14 incurred.

15 (2) The claim for the recovery shall constitute a lien against  
 16 any moneys due or to become due to the subcontractor from the prime  
 17 contractor.

18 (3) A claim for recovery, however, shall not affect the right of  
 19 the injured employee or the dependents of the deceased employee to recover  
 20 compensation due from the prime contractor or his or her insurance carrier.

21 ~~(c)(1)(A) When~~ (c) If a sole proprietorship or partnership fails ~~to~~  
 22 ~~elect~~ to cover the sole proprietor or partners under this chapter, the prime  
 23 contractor is not liable under this chapter for injuries sustained by the  
 24 sole proprietor or partners if the sole proprietor or partners are not  
 25 employees of the prime contractor.

26 ~~(B)(i) A sole proprietor or the partners of a partnership~~  
 27 ~~who do not elect to be covered by this chapter and be deemed employees~~  
 28 ~~thereunder and who deliver to the prime contractor a current certification of~~  
 29 ~~noncoverage issued by the Workers' Compensation Commission shall be~~  
 30 ~~conclusively presumed not to be covered by the law or to be employees of the~~  
 31 ~~prime contractor during the term of his or her certification or any renewals~~  
 32 ~~thereof.~~

33 ~~(ii) A certificate of noncoverage may not be~~  
 34 ~~presented to a subcontractor who does not have workers' compensation~~  
 35 ~~coverage.~~

36 ~~(iii) This provision shall not affect the rights or~~

1 coverage of any employees of the sole proprietor or of the partnership.

2 ~~(2) Furthermore, the prime contractor's insurance carrier is not~~  
 3 ~~liable for injuries to the sole proprietor or partners described in this~~  
 4 ~~section who have provided a current certification of noncoverage, and the~~  
 5 ~~carrier shall not include compensation paid by the prime contractor to the~~  
 6 ~~sole proprietor or partners described above in computing the insurance~~  
 7 ~~premium for the prime contractor.~~

8 ~~(3)(A) Any prime contractor who after being presented with a~~  
 9 ~~current certification of noncoverage by a sole proprietor or partnership~~  
 10 ~~nonetheless compels the sole proprietor or partnership to pay or contribute~~  
 11 ~~to workers' compensation coverage of that sole proprietor or partnership~~  
 12 ~~shall be guilty of a Class D felony.~~

13 ~~(B) Furthermore, any prime contractor who compels a sole~~  
 14 ~~proprietor or partnership to obtain a certification of noncoverage when the~~  
 15 ~~sole proprietor or partnership does not desire to do so is guilty of a Class~~  
 16 ~~D felony.~~

17 ~~(C) Furthermore, any applicant who makes a false statement~~  
 18 ~~when applying for a certification of noncoverage or any renewals thereof~~  
 19 ~~shall be guilty of a Class D felony.~~

20 ~~(d)(1) A certification of noncoverage issued by the commission after~~  
 21 ~~July 1, 2001, shall be valid for two (2) years after the effective date~~  
 22 ~~stated thereon. Both the effective date and the expiration date must be~~  
 23 ~~listed on the face of the certificate by the commission. The certificate must~~  
 24 ~~expire at midnight two (2) years from its issue date, as noted on the face of~~  
 25 ~~the certificate.~~

26 ~~(2) Any certification of noncoverage that is in effect on July~~  
 27 ~~1, 2001, shall expire as follows:~~

28 ~~(A) A certification of noncoverage issued in the years~~  
 29 ~~1993 or 1994 shall expire at midnight on September 30, 2001;~~

30 ~~(B) A certification of noncoverage issued in the years~~  
 31 ~~1995 or 1996 shall expire at midnight on December 31, 2001;~~

32 ~~(C) A certification of noncoverage issued in the years~~  
 33 ~~1997 or 1998 shall expire at midnight on March 31, 2002; and~~

34 ~~(D) A certification of noncoverage issued in the years~~  
 35 ~~1999 or 2000 shall expire at midnight on June 30, 2002.~~

36 ~~(3) The commission may assess a fee not to exceed fifty dollars~~

1 ~~(\$50.00) with each application for a certification of noncoverage or any~~  
2 ~~renewals thereof.~~

3 ~~(4) Any certification of noncoverage issued by the commission~~  
4 ~~shall contain the social security number and notarized signature of the~~  
5 ~~applicant. The notarization shall be in a form and manner prescribed by the~~  
6 ~~commission.~~

7 ~~(5) The commission may prescribe by rule forms and procedures~~  
8 ~~for issuing or renewing a certification of noncoverage.~~

9  
10 SECTION 4. Arkansas Code § 17-25-514 is amended to read as follows:  
11 17-25-514. Workers' compensation required.

12 (a) A residential building contractor required to be licensed by the  
13 Residential Building Contractors Committee shall secure the payment of  
14 workers' compensation under § 11-9-401 et seq.

15 ~~(b)(1)(b)~~ The committee shall require proof of current workers'  
16 compensation coverage before issuing or renewing a license.

17 ~~(2) If a residential building contractor is not required to~~  
18 ~~secure payment of workers' compensation, a current certification of~~  
19 ~~noncoverage issued by the Workers' Compensation Commission shall be submitted~~  
20 ~~to the committee with the application for a license or renewal of a license.~~

21 (c)(1) If a residential building contractor fails to maintain workers'  
22 compensation coverage, the committee shall revoke the residential building  
23 contractor's license.

24 (2) A residential building contractor's license that has been  
25 revoked due to failure to maintain workers' compensation coverage may be  
26 reinstated upon receipt of proof that the contractor has secured workers'  
27 compensation coverage.

28 (d) The committee shall promulgate rules necessary to enforce this  
29 section.

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