

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.

1 State of Arkansas  
2 85th General Assembly  
3 Regular Session, 2005

# A Bill

SENATE BILL 941

4  
5 By: Senator Bisbee  
6 By: Representatives Anderson, Pritchard

## For An Act To Be Entitled

10 AN ACT TO CLARIFY PRIME CONTRACTOR AND  
11 SUBCONTRACTOR LIABILITY UNDER WORKERS'  
12 COMPENSATION LAW; TO AMEND § 11-9-402 OF THE  
13 ARKANSAS CODE WHICH RESULTED FROM INITIATED ACT 4  
14 OF 1948; AND FOR OTHER PURPOSES.

## Subtitle

16 AN ACT TO CLARIFY PRIME CONTRACTOR AND  
17 SUBCONTRACTOR LIABILITY UNDER WORKERS'  
18 COMPENSATION LAW AND TO AMEND § 11-9-402  
19 OF THE ARKANSAS CODE WHICH RESULTED FROM  
20 INITIATED ACT 4 OF 1948.

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

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26 SECTION 1. Arkansas Code § 11-9-402, resulting from Initiated Act 4 of  
27 1948, is amended to read as follows:

28 11-9-402. Liability of prime contractors and subcontractors - Sole  
29 proprietorships or partnerships.

30 (a) Where a subcontractor fails to secure compensation required by  
31 this chapter, the prime contractor shall be liable for compensation to the  
32 employees of the subcontractor unless there is an intermediate subcontractor  
33 who has workers' compensation coverage.

34 (b)(1) Any contractor or the contractor's insurance carrier who shall  
35 become liable for the payment of compensation on account of injury to or  
36 death of an employee of his or her subcontractor may recover from the



1 subcontractor the amount of the compensation paid or for which liability is  
2 incurred.

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

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

9 (c)(1)(A) When a sole proprietorship or partnership fails to elect to  
10 cover the sole proprietor or partners under this chapter, the prime  
11 contractor is not liable under this chapter for injuries sustained by the  
12 sole proprietor or partners if the sole proprietor or partners are not  
13 employees of the prime contractor.

14 (B)(i) A sole proprietor or the partners of a partnership  
15 who do not elect to be covered by this chapter and be deemed employees  
16 thereunder and who deliver to the prime contractor a current certification of  
17 noncoverage issued by the Workers' Compensation Commission shall be  
18 conclusively presumed not to be covered by the law or to be employees of the  
19 prime contractor during the term of his or her certification or any renewals  
20 thereof.

21 (ii) A certificate of noncoverage may not be  
22 presented to a subcontractor who does not have workers' compensation  
23 coverage.

24 ~~(ii)~~(iii) This provision shall not affect the rights  
25 or coverage of any employees of the sole proprietor or of the partnership.

26 (2) Furthermore, the prime contractor's insurance carrier is not  
27 liable for injuries to the sole proprietor or partners described in this  
28 section who have provided a current certification of noncoverage, and the  
29 carrier shall not include compensation paid by the prime contractor to the  
30 sole proprietor or partners described above in computing the insurance  
31 premium for the prime contractor.

32 (3)(A) Any prime contractor who after being presented with a  
33 current certification of noncoverage by a sole proprietor or partnership  
34 nonetheless compels the sole proprietor or partnership to pay or contribute  
35 to workers' compensation coverage of that sole proprietor or partnership  
36 shall be guilty of a Class D felony.

1 (B) Furthermore, any prime contractor who compels a sole  
2 proprietor or partnership to obtain a certification of noncoverage when the  
3 sole proprietor or partnership does not desire to do so is guilty of a Class  
4 D felony.

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

8 (d)(1) A certification of noncoverage issued by the commission after  
9 July 1, 2001, shall be valid for two (2) years after the effective date  
10 stated thereon. Both the effective date and the expiration date must be  
11 listed on the face of the certificate by the commission. The certificate  
12 must expire at midnight two (2) years from its issue date, as noted on the  
13 face of the certificate.

14 (2) Any certification of noncoverage that is in effect on July  
15 1, 2001, shall expire as follows:

16 (A) A certification of noncoverage issued in the years  
17 1993 or 1994 shall expire at midnight on September 30, 2001;

18 (B) A certification of noncoverage issued in the years  
19 1995 or 1996 shall expire at midnight on December 31, 2001;

20 (C) A certification of noncoverage issued in the years  
21 1997 or 1998 shall expire at midnight on March 31, 2002; and

22 (D) A certification of noncoverage issued in the years  
23 1999 or 2000 shall expire at midnight on June 30, 2002.

24 (3) The commission may assess a fee not to exceed fifty dollars  
25 (\$50.00) with each application for a certification of noncoverage or any  
26 renewals thereof.

27 (4) Any certification of noncoverage issued by the commission  
28 shall contain the social security number and notarized signature of the  
29 applicant. The notarization shall be in a form and manner prescribed by the  
30 commission.

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

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