



OKLAHOMA INSURANCE DEPARTMENT
STATE OF OKLAHOMA

BULLETIN NO. PC 2005-06

**TO: ALL PROPERTY & CASUALTY INSURERS LICENSED IN THE STATE OF OKLAHOMA
ALL RATING AND ADVISORY ORGANIZATIONS
ALL JOINT UNDERWRITING ASSOCIATIONS
Attention: State Filing Division**

FROM: The Oklahoma Insurance Department

**RE: Effect of SB 1X Applicable to Employees Excluded From The Workers'
Compensation Act**

DATE: August 2, 2005

PURPOSE OF THIS BULLETIN

During the Extraordinary Session held in June, the Oklahoma State Legislature enacted Senate Bill 1X. Portions of this bill became effective July 1, 2005.

This Bulletin serves as an aid to insurers on one specific issue of this bill and how it will affect the workers' compensation business process in Oklahoma. Please be advised that this bulletin does not cover all the issues addressed in the Workers' Compensation Act. We recommend you review the act in its entirety.

EMPLOYEES EXCLUDED

Senate Bill 1X repealed the sections of Title 40 which created the Certificate of Non-Coverage form. This form was issued by the Oklahoma Department of Labor for those individuals who were not required to be covered under a workers' compensation insurance policy or other plan for the payment of workers' compensation.

The Certificate of Non-Coverage was one of the tools used by businesses, insurers, the Oklahoma Department of Labor, the Oklahoma Workers' Compensation Court, CompSource and others in the evaluation process of the employer-employee relationship. **These other tools may still be used in order to document the exemption.**

Although, the Department of Labor has not issued any Certificate of Non-Coverage forms since July 1, 2005, all of those issued prior to that date will be allowed to expire on the original expiration date stated on the form. The complete Oklahoma Attorney General opinion is attached to this bulletin on the OID website.

Senate Bill 1X does not provide for a state issued card to replace the Certificate of Non-Coverage. The elimination of the Certificate of Non-Coverage has produced confusion as to the types of employees that are excluded from the Workers' Compensation Act. Senate Bill 1X did not revise the provisions of Title 85 which exclude various types of employments from the Oklahoma Workers' Compensation Act. Those exemptions still prevail even though the Certificate of Non-Coverage has been eliminated. The following reflect excerpts from the act and the actual statutory citations should be reviewed in its entirety.

Title 85 O.S. § 2.1 excludes the following types of employment: 1. Any person who is employed as a domestic servant or as a casual worker in and about a private home or household, which private home or household had a gross annual payroll in the preceding calendar year of less than Ten Thousand Dollars (\$10,000.00) for such workers. 2. Any person for whom an employer is liable under any Act of Congress for providing compensation to employees for injuries, disease or death arising out of and in the course of employment including, but not limited to, the Federal Employees' Compensation Act, the Federal Employers' Liability Act, the Longshoremen's and Harbor Workers' Act and the Jones Act, to the extent his employees are

subject to such Acts. 3. Any person who is employed in agriculture or horticulture by an employer who had a gross annual payroll in the preceding calendar year of less than One Hundred Thousand Dollars (\$100,000.00) cash wages for agricultural or horticultural workers. 4. Any person who is a licensed real estate sales associate or broker, paid on a commission basis.

Title 85 O.S. § 2.2 agricultural employees who are not engaged in the operation of motorized machines shall be exempt from coverage of workers' compensation.

Title 85 O.S. § 2.3 medical care or social services program, or who is a participant in a work or training program, administered by the Department of Institutions, Social and Rehabilitative Services, unless the Department is required by federal law or regulations shall be exempt from coverage of workers' compensation.

Title 85 O.S. § 2.4 medical care or social services program, or who is a participant in a work or training program, administered by the Department of Human Services, unless the Department is required by federal law or regulations shall be exempt from coverage of workers' compensation. This section shall not be construed to include nursing homes.

Title 85 O.S. § 2.6 any employer with five or less total employees, all of whom are related by blood or marriage to the employer shall be exempt from the coverage of workers' compensation.

Title 85 O.S. § 2.7 an employer which is a youth sports league which qualifies for exemption from federal income taxation pursuant to 26 U.S.C., Section 501 (a) because it is an organization described in 26 U.S.C., Section 501 (c)(3) or (4) shall be exempt from the Workers' Compensation Act.

Title 85 O.S. § 3(8) further provides exclusions with the definition of "employee". The definition of employee shall not include a person, commonly referred to as an owner-operator, who owns or leases a truck-tractor or truck for hire, if the owner-operator is not the lessor of the truck-tractor or truck. It also provides exclusions for sole proprietors, members of a partnership, members of the limited liability company or any stockholder employees of a corporation who own ten percent (10%) or more stock in the corporation.

Title 85 O.S. § 3(8), Title 85 O.S. § 11, Okla. Admin. Code § 380:30-1-2 independent contractors may choose to be exempt but shall be liable for compensation due to his or her direct employees, or the employees of any subcontractor of such independent contractor, and the principal employer ... unless an employer-employee relationship is found to exist by the Workers' Compensation Court.

The Oklahoma Insurance Department encourages insurers to communicate with their policyholders early in the policy cycle to eliminate misunderstandings as to the required documentation or evidence needed to meet these statutory exemptions.

Questions applicable to this bulletin should be directed to kathiestepp@insurance.state.ok.us or marshafinch@insurance.state.ok.us of the Property and Casualty Division, or Oklahoma Insurance Department, P. O. Box 53408, Oklahoma City, OK 73152-3408.

The Oklahoma Insurance Department encourages readers of this bulletin to periodically check the Department's web site (www.oid.state.ok.us) for news and updates to Bulletins and other relevant material.