

State of South Dakota

NINETIETH SESSION
LEGISLATIVE ASSEMBLY, 2015

661W0085

HOUSE ENGROSSED NO. **HB 1105** - 02/17/2015

Introduced by: Representatives Hawley, Anderson, Kirschman, Otten (Herman), Rounds, and Willadsen and Senators Brown, Lederman, and Sutton

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

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

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

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

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



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

6 The affidavit of exempt status shall contain substantially the following:

7 (1) Statements that the affiant:

8 (a) Is not an employee and does not want a workers' compensation insurance
9 policy;

10 (b) Has read, signed, and understands the exempt status fact sheet attachment to
11 the affidavit;

12 (c) Understands that the affiant will be considered an independent contractor and
13 will not be considered an employee under the South Dakota Workers'
14 Compensation Law;

15 (d) Understands that the affiant will not be eligible for compensation under the
16 South Dakota Workers' Compensation Law;

17 (e) Understands that the signing of the affidavit creates a rebuttable presumption
18 that the affiant is not an employee for the purpose of the South Dakota
19 Workers' Compensation Act;

20 (f) Understands that the signing of the affidavit does not affect the rights or
21 coverage of any employee of the affiant;

22 (g) Is not signing the affidavit or providing information as a result of force, threat,
23 coercion, compulsion, or duress; and

24 (h) Understands that knowingly providing false information on an affidavit of

1 exempt status under the South Dakota Workers' Compensation Law is a Class
2 2 misdemeanor; and

3 (2) An exempt status fact sheet, to be attached to the affidavit, which:

4 (a) Delineates the legal requirements recognized in law for determining whether
5 a person is an independent contractor; and

6 (b) Contains a statement that the affiant believes they are an independent
7 contractor given the preceding list of legal requirements.

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

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

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

15 No employer or general contractor is required to accept an affidavit of exempt status as a
16 substitute for a certificate of workers' compensation coverage.