

1 HB242  
2 181750-1  
3 By Representatives Garrett and Moore (B)  
4 RFD: Commerce and Small Business  
5 First Read: 16-FEB-17

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8 SYNOPSIS: Under existing law, a corporate officer may  
9 annually elect to be exempt from coverage under the  
10 Alabama Workers' Compensation Act by filing a  
11 written certification of that election with the  
12 Department of Labor and the employer's insurance  
13 carrier.

14 This bill would remove the requirement for  
15 the certification to be filed with the Department  
16 of Labor and would add a member of a limited  
17 liability company to the persons who may file for  
18 exemptions.

19  
20 A BILL  
21 TO BE ENTITLED  
22 AN ACT

23  
24 To amend Section 25-5-50, Code of Alabama 1975,  
25 relating to exemption of workers' compensation coverage; to  
26 remove the requirement to file with the Department of Labor;

1 to add a member of a limited liability company to the  
2 exemptions; and to provide an effective date.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. Section 25-5-50, Code of Alabama 1975, is  
5 amended to read as follows:

6 "§25-5-50.

7 "(a) This article and Article 2 of this chapter  
8 shall not be construed or held to apply to an employer of a  
9 domestic employee; an employer of a farm laborer; an employer  
10 of a person whose employment at the time of the injury is  
11 casual and not in the usual course of the trade, business,  
12 profession, or occupation of the employer; an employer who  
13 regularly employs less than five employees in any one  
14 business, other than the business of constructing or assisting  
15 on-site in the construction of new single-family, detached  
16 residential dwellings; or a municipality having a population  
17 of less than 2,000 according to the most recent federal  
18 decennial census. An employer who regularly employs less than  
19 five employees in any one business; a farm-labor employer; an  
20 employer of a domestic employee; or a municipality having a  
21 population of less than 2,000 according to the most recent  
22 federal decennial census, may accept and become subject to  
23 this article and Article 4 of this chapter by filing written  
24 notice thereof with the Department of Labor, a copy thereof to  
25 be posted at the place of business of the employer; provided  
26 further, that an employer who has so elected to accept this  
27 article and Article 4 of this chapter may at any time withdraw

1 the acceptance by giving like notice of withdrawal.  
2 Notwithstanding the foregoing, an employer electing not to  
3 accept coverage under this article and Article 4 of this  
4 chapter shall notify in writing each employee of the  
5 withdrawal of coverage. Additionally, the employer shall post  
6 a notice in a conspicuous place notifying all employees and  
7 applicants for employment that workers' compensation insurance  
8 coverage is not available.

9 "(b) Notwithstanding subsection (a), an officer of a  
10 corporation or individual limited liability company member may  
11 elect ~~annually~~ to be exempt from coverage by filing written  
12 certification of the election with ~~the department~~ and the  
13 employer's insurance carrier. The exemption shall remain in  
14 effect at all times, unless properly revoked as provided  
15 herein, including subsequent coverage years with the same  
16 workers' compensation carrier.

17 "At the end of any calendar year, a corporate  
18 officer or individual limited liability company member who has  
19 been exempted, by proper certification from coverage, may  
20 revoke the exemption and thereby accept coverage by filing  
21 written certification of his or her election to be covered  
22 with ~~the department~~ and the employer's insurance carrier.

23 "The certification for exemption or reinstatement of  
24 coverage shall become effective on the first day of the  
25 calendar month following the filing of the certification of  
26 exemption or reinstatement of coverage with ~~the department~~ the  
27 employer's insurance carrier.

1           "If the corporate officer or individual limited  
2 liability company member elects to be exempt from coverage,  
3 the election shall not relieve the employer from continuing  
4 coverage for all other eligible employees who may have been  
5 covered prior to the election or who may subsequently be  
6 employed by the firm. Notwithstanding any election made  
7 pursuant to this provision, the election by the corporate  
8 officer or individual limited liability company member does  
9 not otherwise change his or her status as an employee for the  
10 purpose of determining the threshold number of employees  
11 necessary to invoke or trigger the applicability of this  
12 chapter.

13           "(c) A corporate officer or individual limited  
14 liability company member seeking to secure coverage by  
15 revoking an existing exemption, at any time other than the end  
16 of the calendar year, in addition to complying with the  
17 provisions of subsection (b), shall execute an affidavit  
18 verifying that he or she has not suffered an employment  
19 accident, exposure, or injury from the date of exemption until  
20 the date of the written certification of the election to  
21 reinstate coverage. Any corporate officer or individual  
22 limited liability company member who fails to execute an  
23 affidavit or comply with other terms and conditions of the  
24 workers' compensation carrier shall not be entitled to revoke  
25 the previous exemption until the end of the calendar year.

26           "The revocation of the exemption and reinstatement  
27 of coverage shall become effective on the first day of the

1 calendar month following the written acceptance of the  
2 certification of exemption or reinstatement of coverage by the  
3 employer's workers' compensation insurance carrier.

4 ~~"(e)~~ (d) This section shall not be construed to  
5 mandate any school board to provide coverage until sufficient  
6 funds are appropriated from the Education Trust Fund to  
7 implement the provisions. Nothing contained herein shall  
8 prohibit any school board that voluntarily elects to provide  
9 such coverage from doing so with local or other available  
10 funds.

11 ~~"(d)~~ (e) This section shall provide for voluntary  
12 coverage of certified volunteer fire departments as described  
13 in Section 9-3-17 and legally organized rescue squads that  
14 meet the minimum personnel and equipment standards as  
15 established by the Alabama Association of Rescue Squads, that  
16 are engaged in fighting a fire or performing other duties  
17 involving any emergency incident and while performing any  
18 official supervised duties of the organization, including  
19 maintaining equipment and attending official training classes,  
20 and while traveling to and from an emergency incident.

21 ~~"(e)~~ (f) In all cases where an injury that is  
22 compensable under the terms of the Alabama Workers'  
23 Compensation Law is received by a volunteer fire fighter or  
24 rescue squad member, the wages for purposes of computing the  
25 average weekly wage shall be equal to 66 2/3 percent of what  
26 he or she is earning at his or her regular place of employment  
27 or 66 2/3 percent of the minimum wage, whichever is greater.

1           "~~(f)~~ (g) State certified volunteer fire departments  
2 and legally organized rescue squads are herein granted the  
3 right to purchase workers' compensation medical or disability  
4 insurance, or both, but in no event are they required to do  
5 so.

6           "In no event shall the regular employer of a  
7 volunteer fire fighter or rescue squad member be liable for a  
8 compensable injury under this section.

9           "~~(g)~~ (h) A licensed real estate agent operating under  
10 a licensed broker shall not be considered an employee for the  
11 purposes of this chapter.

12           "~~(h)~~ (i) An individual who performs services as a  
13 product demonstrator shall not be considered an employee for  
14 purposes of this chapter. The term "product demonstrator"  
15 shall mean any individual who satisfies both of the following  
16 requirements:

17           "(1) Is engaged in the trade or business of  
18 demonstrating, exhibiting, or soliciting the purchase of food,  
19 food-related products offered for sale, or other consumer  
20 products offered for sale to any buyer on the premises of a  
21 grocery store, dry good store, or similar retail  
22 establishment, or trade show;

23           "(2) Who performs those services pursuant to a  
24 written contract between the individual and a person whose  
25 principal business is providing demonstrators to third parties  
26 for such purposes and the contract provides that the

1 individual will not be treated as an employee with respect to  
2 the services for federal tax purposes.

3 "~~(i)~~(j)(1) For purposes of this subsection, sports  
4 official means an individual who is a neutral participant in a  
5 sports event, including, without limitation, an umpire, a  
6 referee, judge, linesman, scorekeeper, or timekeeper. Sports  
7 official does not include any person, otherwise employed by an  
8 organization or entity sponsoring a sports event, who performs  
9 services as a sports official as a part of his or her regular  
10 employment.

11 "(2) A person who performs services as a sports  
12 official for an entity sponsoring an interscholastic or  
13 intercollegiate sports event or if such person performs  
14 services as a sports official for a public entity or a  
15 private, nonprofit organization which sponsors an amateur  
16 sports event shall be an independent contractor and not an  
17 employee.

18 "(3) Any sports official who officiates a sports  
19 event at any level of competition in Alabama shall not be  
20 liable to any person or entity in any civil action for  
21 injuries or damages claimed to have arisen by virtue of  
22 actions or inaction related in any manner to officiating  
23 duties at a sports event, provided the official does not act  
24 willfully, maliciously, fraudulently, or in a manner that is  
25 contrary to how a reasonably prudent official would act under  
26 the same or similar circumstances."



1                   Section 2. This act shall become effective on the  
2 first day of the third month following its passage and  
3 approval by the Governor, or its otherwise becoming law.