



**ARKANSAS INSURANCE DEPARTMENT
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**THE NEW WORKERS' COMPENSATION LAW'S
CERTIFICATES OF NON-COVERAGE (SOLE PROPRIETORS
AND PARTNERS); ACT 796 OF 1993, §§ 2 AND 10**

Attached hereto is the form* prepared by the Workers Compensation Commission which is to be used by *sole proprietors* and *partners* who have a legitimate, independent, full-time, business and who desire to exclude themselves [not any employees they may have] from workers compensation coverage. The form is designed for use by people who are in business for themselves regardless of whether they engage in contracting relationships as sub-contractors. The statute and the form, however, were designed primarily to address the problems of those who enter into sub-contracting relationships with "prime contractors" and who have, in the past, often been forced to pay or contribute to workers compensation insurance by either the prime contractors or auditors for workers compensation carriers.

If the application is submitted to the Commission and the "Certificate of Non-Coverage" is issued, then the sole proprietor or partner who enters into a sub-contract will be able to use that certificate much as he would have been able to use a certificate of insurance. There will, therefore, now be *two* ways of assuring the prime contractor and his carrier that the sole proprietor or partner does not pose a workers' compensation risk to them.

This is to be very restrictively-administered program. The Department is concerned that there will be people and organizations who will try to abuse the new statute and procedure and go beyond its intent. Anyone, for example, who has a regular, "common law" employee daily working in a plant on an assembly line who forces that employee to complete one of these forms and give up workers compensation coverage is abusing the statute and could probably be charged with a felony.

Sections 2 and 10 of Act 796 of 1993 compel the conclusion that even those sole proprietors or partners who, prior to July 1, 1993, never dealt with contractors and never "elected" to cover themselves by filing Forms A-18 with the Workers' Compensation Commission are *now* required to be covered UNLESS they avail themselves of the "Non-Coverage" procedure. This is the purpose of the "NOTICE" in paragraph "d" of the instructions on the attached application. Property and Casualty insurance agents would be well-advised to let their clients falling into this category know how the law has been changed. It could not make much "practical" difference to a true sole proprietor (he is his own "employer"), but it could well pose complicated coverage issues in partnership cases. In cases of injury to sole proprietors or partners who have not be advised of the change in the law by their regular insurance agents, it could (conceivably) lead to "errors and omissions" claims against the agents.

All agents and insurers must recognize that this new law was effective on July 1, 1993, and *could be read* so as to require insurance coverage under a prime contractor's policy of all sole proprietors and partners *as of that date* – even if they had previously not been covered under the old law and were properly excluded from the prime's coverage. One could argue that the “contracts clause” of the *Constitution of the United States* (Art.1,§ 10) would prohibit such a result (at least until the policy in questions is renewed) since such an amendment would be an “unreasonable impairment” of the parties’ right to contract; but it must also be recognized that “social purpose” legislation such as in the workers compensation arena and where coverage is mandated is certainly more likely to be read by the courts as effecting immediate change. These are complex legal issues, and we do not pretend to know how the courts would ultimately decide them, but, as a matter of sound public policy and administration, the Insurance Department will be taking the following position:

Carriers may include properly sole proprietors and partners under a prime or general contractor's current policy as of *July 1, 1993*, unless they receive a Certificate of Non-Coverage from that sole proprietor or partner prior to December 31, 1993. We had previously suggested a cut-off date of October 1, 1993, but the practical difficulty of disseminating this information statewide to all potentially affected persons has been so enormous, that we view this “extension” as the only practical resolution.

The clear presumption must be that if the sole proprietor or partner does not submit such a certificate by the extended date of December 31 he (or she) either:

- i. has been injured and wants coverage;
- ii. has not been contacted by his agent;
- iii. has been contacted but does not want to “opt out”; or
- iv. is not entitled to an exemption under the new Law.

In either of these events, the carrier is clearly entitled to premium as to the risk involved from *July 1, 1993*.

Please note that you may copy or duplicate the attached form and circulate it among your producers. A supply of such forms will be available from the Workers Compensation Commission. Any suggestions you may have for amending the form or perhaps making it more clear should be addressed to the Commission.

Your help and cooperation in getting the new Act “on line” is most appreciated. We at the Insurance Department will do all that we can to help you. Remember, however the completed applications must go to the Workers’ Compensation Commission at the address on the form, and they [at (501) 682-3930] will be much more qualified than we to answer any technical questions you might have inasmuch as the issuance of the “Certificates” is within the Commission’s purview.

Lee Douglass
INSURANCE COMMISSIONER

The form and procedures to get a Certificate of Noncoverage have changed and will not be attached to this electronic copy to avoid confusion. The current application may be obtained from the Arkansas Workers’ Compensation Commission at 501-682-3930 or from their website at <http://www.awcc.state.ar.us>. [Certificate of Non-Coverage instructions](#) Please note that there are **4 required pieces of information:*

1. [Form AR-A \(Application for Certificate of Non-Coverage\)](#) (PDF Format)
2. Notarized signature of applicant ([See sample affidavit here](#))
3. Social Security number of applicant
4. A \$50 check or money order for each person must accompany application (those applying in person may pay in cash, but checks and money orders are encouraged).