STATE OF TENNESSEE
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Opinion No. 09-173

Workers' Compensation Insurance Coverage for Sole Proprietors in the Construction Industry

QUESTION

Do the changes to Tenn. Code Ann. § 50-6-113 effectuated by 2008 Tenn. Pub. Acts ch. 1041, which take effect on December 31, 2009, require a sole proprietor with employees, who is performing construction work on the property of a homeowner, to carry workers' compensation insurance on himself?

OPINION

Yes, a sole proprietor with employees is required to carry workers' compensation insurance on himself, except where the sole proprietor contracts directly with a homeowner or is working on the sole proprietor's own home.

ANALYSIS

You have asked whether changes to Tenn. Code Ann. § 50-6-113 will require a sole proprietor with employees to carry workers' compensation on himself when he is performing construction work on the property of a homeowner. 2008 Tenn. Pub. Acts ch. 1041 § 1, to be codified as Tenn. Code Ann. § 50-6-113(f)(1), provides:

> (A) Any person engaged in the construction industry, including principal contractors, intermediate contractors and subcontractors shall be required to carry workers' compensation insurance.
>
> (B) Notwithstanding subdivision (A) above, a sole proprietor or partner engaged in the construction industry shall not be required to carry workers' compensation on themselves if they are doing work directly for the owner of the property pursuant to subdivision (f)(1)(C), but shall be required to carry workers' compensation insurance on any subcontractor, employee or worker not otherwise covered by a policy of workers' compensation; however, if a sole proprietor or partner is working as an intermediate contractor or

> subcontractor contractor then workers' compensation insurance shall be required on themselves.
>
> (C) The provisions of this subsection shall not apply to any person building a dwelling or other structure, or performing maintenance, repairs, or making additions to structures, on the person's own property for the person's own use and for which the person receives no compensation.

The primary objective of statutory interpretation is to ascertain and give effect to the intent and purpose of the legislature. *Eastman Chem. Co. v. Johnson*, 151 S.W.3d 503, 507 (Tenn. 2004) (citations omitted). When a statute is clear, its plain meaning is applied and nothing more. *Colonial Pipeline Co. v. Morgan*, 263 S.W.3d 827, 836 (Tenn. 2008) (citing *Eastman Chem. Co.*, 151 S.W.3d at 507). When a statute is ambiguous, the broader statutory scheme may be referenced, including the history of the legislation. *Id*. (citing *Parks v. Tenn. Mun. League Risk Mgmt. Pool*, 974 S.W.2d 677, 679 (Tenn. 1998)). In addition, statutes must be construed and applied in their entirety. *McCoy v. T.T.C. Illinois, Inc.*, 14 S.W.3d 734 (Tenn. 2000).

The amended Tenn. Code Ann. § 50-6-113(f)(1) sets out the circumstances under which a sole proprietor performing construction work on the property of a homeowner must carry workers' compensation insurance on himself. Subdivision (f)(1)(B) states that sole proprietors are not required to carry workers' compensation on themselves if they are doing work directly for the owner of the property, pursuant to subdivision (f)(1)(C). Subdivision (f)(1)(C) exempts sole proprietors from carrying workers' compensation insurance on themselves when working on their own homes. Thus, a narrow interpretation of the statute is that a sole proprietor must carry workers' compensation insurance on himself in all situations except when he is working on his own home. However, the exception for "doing work directly for the owner of the property" seems to refer to a homeowner other than the sole proprietor himself. Thus, the statute is ambiguous, and we may look to the legislative history of the statutory change for clarification.

The legislative history of this amended statute reveals that the change was prompted by a need to ensure that all subcontractors and employees working on a construction site were properly covered by workers' compensation insurance, as some employers were avoiding paying for coverage by claiming that their employees or subcontractors were actually sole proprietors. *See, e.g.*, Joint Workers' Comp. Comm. discussion on April 23, 2007, tape 1 at 36-620. The legislative history also makes clear that the statutory change was not intended to overburden true sole proprietors who work directly for homeowners by requiring them to carry workers' compensation coverage on themselves. *Id*. at 305-620.

It is the opinion of this Office that the legislature intended the amended Tenn. Code Ann. § 50-6-113(f)(1) to be interpreted such that a sole proprietor who contracts directly with a homeowner is not required to carry workers' compensation coverage on himself but must carry workers' compensation insurance for any subcontractor, employee, or worker who is not

otherwise covered by a workers' compensation policy. In addition, a sole proprietor who is working on his own home is not required to carry workers' compensation coverage on himself.

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