STATE OF OKLAHOMA

1st Session of the 43rd Legislature (1991)

HOUSE BILL NO. 1206 BY: STOTTLEMYRE

AS INTRODUCED

AN ACT RELATING TO WORKERS' COMPENSATION; AMENDING 85 O.S. 1981, SECTION 12, AS LAST AMENDED BY SECTION 1, CHAPTER 81, O.S.L. 1984 (85 O.S. SUPP. 1990, SECTION 12), WHICH RELATES TO LIABILITY OF EMPLOYERS AND EMPLOYEES; MODIFYING LIABILITY OF EMPLOYERS FOR GROSS NEGLIGENCE; AND PROVIDING AN EFFECTIVE DATE.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 85 O.S. 1981, Section 12, as last amended by Section 1, Chapter 81, O.S.L. 1984 (85 O.S. Supp. 1990, Section 12), is amended to read as follows:

Section 12. ~~The~~ A. Except as provided in subsection C of this section, the liability prescribed in Section 11 of this title shall be exclusive and in place of all other liability of the immediate employer only and any of his employees, any architect, professional engineer, or land surveyor retained to perform professional services on a construction project, at common law or otherwise, for such injury, loss of services, or death, to the employee, or the spouse, personal representative, parents, or dependents of the employee, or any other person. If an employer has failed to secure the payment of compensation for his injured employee, as provided for in this title, an injured employee, or his legal representatives if death

results from the injury, may maintain an action in the courts for damages on account of such injury, and in such action the defendant may not plead or prove as a defense that the injury was caused by the negligence of a fellow servant, or that the employee assumed the risk of his employment, or that the injury was due to the contributory negligence of the employee; provided:

~~(i)~~ 1. The immunity created by the provisions of this section shall not extend to action by an employee, or the spouse, personal representative, parents, or dependents of the employee, or any other person against another employer, or its employees, on the same job as the injured or deceased worker where such other employer does not stand in the position of an intermediate or principal employer to the immediate employer of the injured or deceased worker;

~~(ii)~~ 2. The immunity created by the provisions of this section shall not extend to action against another employer, or its employees, on the same job as the injured or deceased worker even though such other employer may be considered as standing in the position of a special master of a loaned servant where such special master neither is the immediate employer of the injured or deceased worker nor stands in the position of an intermediate or principal employer to the immediate employer of the injured or deceased worker; and

~~(iii)~~ 3. This provision shall not be construed to abrogate the loaned servant doctrine in any respect other than that described in paragraph ~~(ii)~~ 2 of this section. This section shall not be construed to relieve the employer from any other penalty provided for in this title for failure to secure the payment of compensation provided for in this title.

~~(iv)~~ B. For the purpose of extending the immunity of this section, any architect, professional engineer, or land surveyor shall be deemed an intermediate or principal employer for services performed at or on the site of a construction project, but this

immunity shall not extend to the negligent preparation of design plans and specifications.

C. The liability prescribed in Section 11 of this title shall not be exclusive if the injury was proximately caused by the gross negligence of the employer.

SECTION 2. This act shall become effective September 1, 1991.

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