

ENGROSSED SENATE
BILL NO. 789

By: Laster, Wilson, Garrison,
and Easley of the Senate

and

Morgan (Fred) of the House

An Act relating to workers' compensation; amending 85 O.S. 2001, Section 12, which relates to exclusive remedy; providing for application of certain defense under certain circumstances; and providing an effective date.

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

SECTION 1. AMENDATORY 85 O.S. 2001, Section 12, is amended to read as follows:

Section 12. The liability prescribed in Section 11 of this title shall be exclusive and in place of all other liability of the employer 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~~ an 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; however, if the employee was at the time of the injury or accident under the influence of substances defined and consumed, pursuant to Section 465.20 of Title 63 of the Oklahoma Statutes, alcohol, illegal drugs, medication

without a prescription, or was impaired as a result of illegally using chemicals, an employer may plead or prove as a defense that the injury was due to the contributory negligence of the employee;
provided:

(i) 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) 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) This provision shall not be construed to abrogate the loaned servant doctrine in any respect other than that described in paragraph (ii) 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) 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.

SECTION 2. This act shall become effective November 1, 2005.

Passed the Senate the 2nd day of March, 2005.

Presiding Officer of the Senate

Passed the House of Representatives the ____ day of _____,
2005.

Presiding Officer of the House
of Representatives