

SB 789

1 THE STATE SENATE
2 Monday, February 21, 2005

3 Senate Bill No. 789

4 As Amended

5 SENATE BILL NO. 789 - By: LASTER of the Senate and MORGAN (Fred) of
6 the House.

7 An Act relating to workers' compensation; amending 85 O.S.
8 2001, Section 12, which relates to exclusive remedy;
9 providing for application of certain defense under certain
10 circumstances; and providing an effective date.

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

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

14 Section 12. The liability prescribed in Section 11 of this
15 title shall be exclusive and in place of all other liability of the
16 employer and any ~~of his~~ employees, any architect, professional
17 engineer, or land surveyor retained to perform professional services
18 on a construction project, at common law or otherwise, for such
19 injury, loss of services, or death, to the employee, or the spouse,
20 personal representative, parents, or dependents of the employee, or
21 any other person. If an employer has failed to secure the payment
22 of compensation for ~~his~~ an injured employee, as provided for in this
23 title, an injured employee, or ~~his~~ legal representatives if death
24 results from the injury, may maintain an action in the courts for
25 damages on account of such injury, and in such action the defendant

1 may not plead or prove as a defense that the injury was caused by
2 the negligence of a fellow servant, or that the employee assumed the
3 risk of ~~his~~ employment, or that the injury was due to the
4 contributory negligence of the employee; however, if the employee
5 was at the time of the injury or accident under the influence of
6 substances defined and consumed, pursuant to Section 465.20 of Title
7 63 of the Oklahoma Statutes, alcohol, illegal drugs, medication
8 without a prescription, or was impaired as a result of illegally
9 using chemicals, an employer may plead or prove as a defense that
10 the injury was due to the contributory negligence of the employee;
11 provided:

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

19 (ii) The immunity created by the provisions of this section
20 shall not extend to action against another employer, or its
21 employees, on the same job as the injured or deceased worker even
22 though such other employer may be considered as standing in the
23 position of a special master of a loaned servant where such special

1 master neither is the immediate employer of the injured or deceased
2 worker nor stands in the position of an intermediate or principal
3 employer to the immediate employer of the injured or deceased
4 worker; and

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

11 (iv) For the purpose of extending the immunity of this section,
12 any architect, professional engineer, or land surveyor shall be
13 deemed an intermediate or principal employer for services performed
14 at or on the site of a construction project, but this immunity shall
15 not extend to the negligent preparation of design plans and
16 specifications.

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

18 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 2-15-05 - DO
19 PASS, As Amended and Coauthored.